

STATUTORY PLANNING AS A FORM OF SOCIAL CONTROL:

THE EVOLUTION OF TOWN PLANNING LAW
IN MANDATORY PALESTINE AND ISRAEL 1917-1980'S

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ABSTRACT

This socio-legal study of town and country planning draws upon the examples of the Israeli system and its predecessor of Mandatory Palestine, and studies them in the light of the British parent system.

The underlying thesis is that statutory planning functions as a special component in a complex system of social control. Beyond its immediate concern with regulating the utilisation of the physical environment, statutory planning is designed and implemented with the aim of supporting the prevailing social order.

The application to statutory planning systems of the concept of social control - which elucidates the regulation of behaviour in society and the phenomenon of social order - leads to the identification of three inter-related roles. These can be classified loosely as: 1) political role, to serve as a tool for effective government; 2) economic role, to utilise scarce resources efficiently; 3) social role, to advance human welfare. Their cumulative exercise contributes to the maintenance of the prevailing social order.

This analysis shows that the social order throughout the history of Palestine and Israel 1917-1980's was in constant flux.

It is claimed that the Mandatory system, motivated by colonial ideology, attached excessive importance to statutory planning's political role in order to establish the authority of the British government over Palestine's rival communities. Planning's economic and social roles were relegated to secondary importance.

During the Israeli system's formative stage, this political role, which suited the prevailing perception of representative democracy, was important in establishing and legitimising the new government. However, the social and economic roles were of paramount importance due to the prevailing ideology of collectivism. This led to a unique process of social engineering through physical planning.

The current Israeli system reflects some new trends towards participatory democracy in planning organisation and individualism in the planning process and provisions, and a move away from narrow physical land use perceptions towards an integrated physical-economic-social outlook. Nevertheless, the basic principles of the early 1920's can still be seen in the system of the 1980's.

CONTENTS

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ACKNOWLEDGEMENTS

ABSTRACT

INTRODUCTION	1
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PART I

STATUTORY TOWN AND COUNTRY PLANNING IN PALESTINE 1917-1948	11
---	----

Chapter 1

The Need for Town Planning and Factors Affecting its Evolution .	14
--	----

Chapter 2

Planning Under the British Military Administration: The Preliminary Stage of Statutory Planning	28
A. Town Planning in Jerusalem	34

Chapter 3

Planning Under the British Civil Administration: Two Stages of Statutory Planning	48
--	----

Chapter 4

The First Stage of Statutory Planning 1921-1936	56
A. Town Planning Ordinance 1921	56
1. Planning Administration under the 1921 Ordinance ...	58
a. The High Commissioner for Palestine	61
b. Central Building and Town Planning Commission ...	64
c. Local Building and Town Planning Commission	66
d. The Municipalities	68
2. The Statutory Scheme under the 1921 Ordinance	70
a. The Form of the Scheme under the 1921 Ordinance .	75
b. Planning Objectives and Relevant Considerations under the 1921 Ordinance	77

3.	Positive Implementation under the 1921 Ordinance ...	80
4.	Development Control under the 1921 Ordinance	83
5.	The Rights of the Individual Landowners and Public Participation under the 1921 Ordinance	86
B.	Statutory Planning in Action during the First Stage	90
1.	Town Planning (Amendment) Ordinance 1922	93
2.	Town Planning (Amendment) Ordinance 1929	94
	a. The Local Institutions and the Planning Machinery	95
	b. Two Categories of Statutory Schemes	98
	c. Interim Development Provisions	102
	d. Rearrangement of Expropriation Provisions	103
C.	The Development of Palestine during the First Stage	105
1.	Development by the Government	105
2.	Development by the Local Population	110
	a. Rural Planning and Development	117
	b. Regional Planning	119
	c. Physical Development in the Arab Sector	120

Chapter 5

The Second Stage of Statutory Planning 1936-1948	124
A. Town Planning Ordinance 1936	124
1. Decentralisation of Planning Administration	125
2. Transfer of Responsibilities to Local Insitutions ..	127
3. Structure and Content of Statutory Schemes	128
4. Private Property Rights, the Public Interest and the Planning Administration	130
5. Positive and Restrictive Tools for the Implementation of Planning	134
B. Statutory Planning in Action during the Second Stage ...	136
1. Town Planning (Amendment) Ordinance 1938	140
2. Town Planning (Amendment) Ordinance 1939	141
3. Town Planning (Amendment) Ordinance 1941	142

C. The Development of Palestine during the Second Stage ...	145
1. Development by the Government	145
2. Development by the Local Population	147
D. Town and Country Planning Bills 1945, 1947	151

PART II

STATUTORY TOWN AND COUNTRY PLANNING IN ISRAEL 1948-1980'S	155
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Chapter 6

The Need for Town Planning and Factors Affecting Its Evolution	157
A. The Perception of Statehood: Nationalism versus Factionalism	166
B. Zionist Ideology in the Era after the Establishment of the State	167
C. Representative Democracy and Participatory Democracy ...	168
D. Collectivism versus Private Initiative in Physical and Economic Development	170
E. Agricultural Way of Life versus Urbanisation and Industrialisation	171

Chapter 7

The First Stage of Statutory Planning 1948-1965	184
A. The Machinery of Planning	184
1. Non-Statutory Planning Machinery	186
2. The Statutory Planning Machinery	197
3. Representative Democracy and the Statutory Planning Machinery: The Reform in District Commissions - the 1954 Amendment	202
B. Policies, Plans and Practice during the First Stage	210
1. National Policy for the Dispersion of the Population	212
2. Regionalist Approach and Hierarchy of Settlements ..	217

3.	New Towns	221
4.	Consolidation of the Rural Settlements	223
5.	Protection of Agricultural Land and the Prevention of Urban Sprawl	227
6.	Geographical Distribution of Industry	229
7.	Communications Network as a Tool for Balanced Development	234
8.	Parks, Afforestation and Landscape Preservation	237
9.	The Perception of Statehood and Authority in Statutory Planning Law Enforcement: The 1951, 1959 Amendments	240
10.	Collectivism and Individualism in Statutory Planning: Rearrangement of Plots of Land - The 1957 Amendment	243
11.	Representative Democracy, Collectivism and Public Participation	246
C.	Plan Making during the First Stage	250
1.	National Planning as a Process	250
2.	Regions of Priority	251
3.	District (Regional) Plans	252
4.	Local Plans	253
D.	The Legal-Administrative System and the Planning System	256
1.	The Legislator	256
2.	The Executive	259
3.	The Judiciary	261

Chapter 8

The Second Stage of Statutory Planning 1965-1980's	275
A. Planning Machinery during the Second Stage	279
1. The Nature and Character of the New Machinery	280

2.	Plan Making Insitutions	282
a.	The National Board for Planning and Building	282
b.	District Planning and Building Commissions	290
c.	Local Planning and Building Commissions	293
d.	Special Planning Insitutions	299
e.	The Statutory Committee for the Protection of Agricultural Land	302
3.	Decision Making Institutions	303
a.	The Cabinet as a Planning Decision Making Institution	303
b.	The Minister of the Interior	306
B.	Plans, Policies and Practice during the Second Stage ...	310
1.	Statutory Schemes	310
2.	The Policy of Population Dispersal during the Second Stage	316
3.	Consolidation of the Rural Sector and Protection of Agricultural Land during the Second Stage	322
4.	The Dispersion of Industry during the Second Stage .	325
5.	Slum Clearance and Renewal Neighbourhoods	328
6.	Regional Planning during the Second Stage	334
C.	Judicial Influence of Statutory Planning during the Second Stage	339
1.	The Scope of Planning Considerations	343
2.	Flexibility and Stability in the Planning Process ..	347
3.	Planning Bargaining	349
4.	The Effect of Planning Provisions on the Individual	351

PART III

STATUTORY PLANNING AS A FORM OF SOCIAL CONTROL	354
--	-----

Chapter 9

The Organisation of Planning and Effective Government	356
A. Formal Organisation	357
B. Composition	362

Chapter 10

The Planning Process and Efficient Utilisation of Scarce Resources	374
A. Formal Decision Making Process	376
B. The Effect of the Planning Process on the Environmental Sphere	393

Chapter 11

The Substantive Content of Planning and Social Progress	407
A. Coexistence Between the Owners of Property Rights	409
B. Coexistence Between Public and Private Interests	417
C. Coexistence Between Different National Communities and Social Groups	424

Chapter 12

Planning Implementation and the Social Order	430
A. Restrictive Implementation	432
B. Regulative Implementation	436
C. Towards Positive Implementation	441

NOTES	445
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INTRODUCTION: AIMS AND METHODOLOGY

Town planning law is often classified as an integral component of modern social legislation and is mentioned in the context of the range of 20th century social reforms [1]. However, despite the quantity of research into the significance of town planning to society, town planning law is commonly perceived in Israel, as well as other places, as a technical-professional subject, of relevance only to a limited circle of planners, developers, lawyers, landowners and official planning authorities. Its subject matter is seen as focusing on the physical elements of the environment, rather than on the social life taking place within that framework.

It is widely accepted that - in the words of Lord Dennis Lloyd - "beneath even the most apparently technical of rules there may lurk deeply held social or political philosophies" [2]. Nevertheless, the wider social, political, economic and bureaucratic foundations and implications of physical-spatial planning and its legal devices have, with the exception of particular cases, not yet aroused any permanent interest in the Israeli general public.

This work, which is a socio-legal study [3] of town planning, attempts to gain a better insight into the nature of town planning and the societal aspects of the law and its implementation. It strives to fill a vacuum in existing research in Israel by providing a comprehensive explanation to the statutory planning system as a

whole, rather than delve deeper into limited sections of the system [4]. It seeks to bridge the gap between legal studies of town planning issues, focusing on legislative texts and their judicial interpretation [5], and studies relating to the formulation of town planning concepts and their implementation which virtually ignore the whole of the legal phenomena [6].

This study draws upon the examples of the statutory town and country planning systems of the State of Israel, and of its predecessor Mandatory Palestine, in light of their British parent system. These systems provide the subject data which is then analysed in respect to the concept of social control.

The original objective of this work was somewhat less ambitious: identification of the underlying dimensions of town planning law in contemporary Israel. However, very early on it was realised that, as the existing Israeli system is intimately connected with its predecessor Mandatory planning law, and as both were affected by the British statutory planning system, the scope of this work had to be widened. In addition, a more comprehensive understanding of town planning law required analysis of the relevant historical circumstances of the last seventy years, including study of spatial, political, ideological, social, economic and bureaucratic conditions.

In the absence of any comprehensive study of this kind, this work faced a particular challenge which led to the following extended thesis.

The underlying theme of the description and analysis of town and country planning law of Mandatory Palestine and Israel is that statutory planning serves as a component of a special nature in a complex system of social control. Thus, beyond its immediate concern with regulating human utilisation of the physical environment, statutory planning is designed and exercised to support the functioning of the prevailing social order as a whole.

This general framework requires some clarification, in particular the significance of the sociological concept of social control in a consideration of statutory town and country planning.

The activity of town and country planning, in the sense of basic regulation of the layout of design of human settlements, is assumed to be as old as civilisation itself. However, the introduction of town planning laws in the 20th century signified the beginning of the modern era of planning in Britain and consequently in those territories over which Britain had responsibility. Town planning laws, as part of modern social legislation, are thus rightly given as an example of the growing role of legislation as a source of law.

"Social control" is considered a concept which elucidates the phenomenon of social order and norm oriented behaviour. It describes the regulation of behaviour in society by the establishment of morals and values, standards and rules, which are generally accepted as binding on human conduct [7]. Under this concept, living in human

society implies that pressure is brought to bear upon the individual to fit into the prevailing patterns of social interaction. The term "interaction" implies that members of society develop some expectations as to the behaviour of the individual in a given situation and upon such expectation they build their own behaviour [8]. Social control thus safeguards the amount of conformity without which social order, and in fact the very existence of society, is impossible [9].

The American sociologist E.A. Ross was the first to coin the term social control [10]. He used it to describe the mechanisms of social regulation in the move from the state of "natural order" - an order which prevails in primary groups (e.g. the family) or primitive societies - to a state of "moral rational order" - an order which prevails in complex heterogenous societies. In the former, an unplanned natural control exists among humans, while the latter is an artificial order which Ross saw as being erected through law and other intended and planned mechanisms such as education, morals, public opinion, ceremonies, etc. By such means, he argued, society ensures its domination over individuals and enforces conformity to its norms.

This theory of social order, which resembles Tounies' Gemeinschaft-Gesellschaft model [11], is regarded by some as over-deterministic and inconsistent with human history [12]. Other theories thus emphasise a notion of social control which encompasses elements from both the small community order and from that of an advanced, urban-industrial society. Such notions include unplanned

and unconscious mechanisms, as well as intended and planned ways of social control [13].

Ross and other early investigators highlighted the variety of ways by which social control is exercised and affects individuals.

During the 1920's and 1930's, the concept of social control was used extensively in the broad context of social systems. Roscoe Pound, in his outstanding study, saw social control exercised through law in this broad sense [14]. By contrast, since the 1940's and the 1950's, the concept has become systematically limited to the control of deviant individuals, thus acquiring a much narrower definition. Talcott Parsons developed the concept of social control in the context of deviance. In his words, "The theory of social control is ... the analysis of those processes in the social system which tend to counteract the deviant tendencies ... Every social system has ... a complex system of unplanned and largely unconscious mechanisms which serve to counteract deviant tendencies" [15].

However, this work is concerned with the former and more general aspect of control, exercised by society over its members as a whole.

The sociologist Karl Mannheim considered the issue of planning in democratic societies from a perspective of the mechanisms of social control. In his books "Man and Society, in an Age of Reconstruction" [16] and "Freedom, Power and Democratic Planning" [17], Mannheim dealt extensively with the theme of planning as a

necessary method for creating new techniques of social control. Such techniques were regarded as necessary for reconstruction of the social order in view of the crisis in the Western world since the Industrial Revolution. This crisis is characterised by Mannheim as "maladjustments in modern society". These he considered to be evident in the social, economic, psychological, moral and cultural spheres of life. He places the roots of the problems in the population growth, rapid industrialisation and urbanisation within a comparatively short period. The unguided and planless transformation from small communities into mass society led, according to Mannheim, to social disintegration. The conditions of the liberal order at the late industrial age, under laissez-faire principles, were turned into chaos and anarchy. He thus concludes: "the alternatives are no longer 'planning' or 'laissez-faire', but 'planning for what?' or 'what kind of planning?'" [18].

In answering these questions, Mannheim advocates "democratic planning" for freedom and individual liberties. He attempts a reconciliation between planning as a necessary measure for efficient community action to prevent chaos and the values of freedom and liberty. Aware of the danger that planning power can turn into a corrupt and oppressive tool by which democracies may be transformed into dictatorships, Mannheim tried to safeguard the democratic nature of planning by controlling the controllers [19].

Those views of Mannheim and others, which emphasised the virtues of all embracing social planning, were criticised as being utopian as well as totalitarian. Hayek [20] saw an inconsistency

between planning, democracy and the rule of law. He considered interventionist planning as a dangerous aberration. Karl Popper [21] criticised the belief that it is possible to make, and act upon, long term predictions about social development. He advocated instead piecemeal social engineering in which social arrangements are changed by small adjustments and readjustments.

However, in spite of the controversy regarding the theory of social planning, de facto the phenomenon of a planned society has increasingly prevailed in the modern world.

Social control can be approached at two levels. Firstly as a neutral technical concept describing the basic mechanisms which maintain any human society through the use of normative systems. Secondly as a purposive "social engineering" concept describing the mechanisms which enable the domination of a particular form of social order through the introduction and maintaining of particular values, norms and rules of behaviour.

Likewise, statutory planning can be approached in these two ways. Firstly, in the traditional way, town and country planning can be seen as the physical design of the built environment. It can thus be described as a form of ordering the distribution of land between competing users by controlling the processes of development and thus creating a designed base for social life. The key points of this approach are the physical components; land, buildings, communication routes, recreation areas, etc. These are said to be arranged rationally and objectively to meet the needs of society. In this way,

a system of statutory planning can be seen in a neutral-technical sense as a contributing method, in the limited sphere of the physical environment, to protect and maintain society.

A more comprehensive approach first views society in the broad sense of social interaction and the resulting socio-economic order. It examines how this order is expressed in various aspects of life, including the physical environment. It examines further how the physical environment in turn affects the social order. In this way statutory planning can be seen on the one hand as a reflection, and on the other hand as a tool, of the creation and maintenance of a particular form of social order.

This work places its main emphasis on the second approach. By thus treating social control as a defining characteristic of statutory planning, a better insight is gained into the nature of a statutory planning system as part of society, rather than if we were to rely on the first approach and simply study the legal rules in the context of the physical environment alone.

The application of the concept of social control to the statutory planning systems of Israel and its former system of Mandatory Palestine leads to the identification of three interrelated roles which were exercised by these systems. These roles can be loosely classified as follows: 1) political role - to serve as a tool for effective government; 2) economic role - to provide efficient utilisation of scarce resources; 3) social role - to advance human welfare and progress. The cumulative exercise of these roles, from

which statutory planning largely draws its characteristics as a component of social control, contributes to the support and maintenance of the prevailing social order.

The specific content given in any particular system to each of these roles, and the relative importance attached to each at any given time, have different effects, and they are in turn affected by the prevailing social order. Hence the multi-form nature of statutory planning as a component in social control.

The methodology of this work involved the description and analysis of legislative texts, their judicial interpretation, and their implementation. For a fuller understanding of the statutory system, use was made of official explanatory notes, together with unpublished documents containing comments by officials responsible for planning legislation. The ideas and perceptions of the people involved in shaping town planning laws were studied from various writings and several personal interviews.

As mentioned above, the law and its implementation are placed in the broader setting of physical developments of the country, including the constant demographic changes throughout the described era, social composition, economic conditions, ideological diversity, political problems and bureaucratic culture. Information on the above was gathered from general literature in the respective fields and writings dealing with town planning issues in combination with other subjects. Further invaluable material regarding the concepts and principles of statutory and non-statutory planning applied in Israel

throughout the years was found in both published schemes and decisions and unpublished proposed plans and policies. The writings of, and personal interviews with, professional planners, administrators, legal advisors, politicians, developers and other public figures shed a great deal of light on the nature and character of the system and provided first-hand information as to the shaping of the theory and practical implementation of the system.

Since this work is a "socio-legal" research paper, the law is studied while making use of (what is considered by McAuslan as characteristic to such research) "information, ideas and perspectives derived from the social sciences, in order to re-interpret and gain fuller understanding of legal phenomena and concepts" [4]. Here it is the concept of social control which is applied.

The first part of this work describes and analyses the evolution of statutory planning in Mandatory Palestine between 1917 and 1948. The second part deals with the continuing evolution of the Israeli systems between 1948 and the 1980's. In the third part, the concept of social control is applied to the above systems through the typology of the three roles mentioned above.

PART I

STATUTORY TOWN AND COUNTRY PLANNING IN PALESTINE, 1917-1948

Part I of this work focuses on the introduction and implementation of statutory town and country planning in Palestine during the era of British rule 1917-1948. An examination of the planning system of Palestine provides an exceptional opportunity to explore the way a modern planning system worked in circumstances of radical transformation, including rapid and intensive development, as experienced in this country. It provides a special opportunity to look at the way the British administration applied British planning concepts, techniques and legal measures to deal with the situation in a territory for which Britain had responsibility. An analysis of this system is also essential for an understanding of the Israeli planning system which succeeded it.

Palestine during this period was not an ordinary Mandated territory. Politically speaking, it had in essence become an international, as well as local, problem. Events which took place there had worldwide repercussions. The three main protagonists in Palestine were the British administration, the Arabs and the Jews. Each of these had the backing of an external force which were respectively the British Empire, the Arab nations, and World Jewry. The goals of each of the groups in Palestine differed considerably, as did the strategies and actual steps taken by each to achieve their

goals. The British were first and foremost concerned with advancing their imperial interests through governing Palestine. The Jews, with their Zionist aspirations, wanted a State of their own in Palestine. The Arabs strove to be the exclusive rulers of the land.

These differences loomed over life in Palestine during this period and are clearly evident in the sphere of town planning and land development.

Statutory planning in Palestine, as seen here, developed basically in two stages. A preliminary stage was the era of British military rule, from 1917 to 1920. During this time, only a limited form of planning was employed. It was focused on the prevention of any significant change in the existing structure and on the protection of the Old City of Jerusalem.

The period of the civil administration, 1920-1948, is divided into two stages. The first began with the enactment of the first Town Planning Ordinance 1921 and lasted until the reform instituted by the Ordinance of 1936. This stage saw the laying of legal foundations for the modern planning system of Palestine. At this stage, the planning system faced significant development of the country. The second stage lasted from 1936 to 1945. Under the new planning law which consolidated and amended the previous legislation, planning became a much more institutionalised system, yet adopted a lower profile, due

at first to local strife and thereafter to World War II. The rapid development after the war up to the withdrawal of Britain from Palestine in 1948 helped the statutory planning system reach its maturation.

Statutory planning in Palestine, as indeed elsewhere, did not arise in a vacuum. In tracing the evolution of this system, some description of the social, economic, political and physical conditions on the eve of British rule - as well as in each stage - is required. This should elucidate both the problems with which statutory planning had to deal, and the solutions it offered.

CHAPTER 1. THE NEED FOR TOWN PLANNING AND FACTORS AFFECTING ITS
EVOLUTION

The spatial-physical, socio-economic, administrative and legal circumstances in Palestine during the final period of Turkish rule formed the basis upon which British rule was established in 1917. These circumstances had a bearing on the organization and operation of the British Administration in general, and on the evolution of statutory town and country planning in particular. It will be worthwhile therefore to describe briefly the circumstances prevailing on the eve of British rule.

Palestine [1], a relatively small country lying between the Mediterranean and the River Jordan, comprised a total area of 27,000 square kilometres (10,400 square miles). Its location at the crossroads of three continents and two oceans resulted in a wide range of ecological conditions within its small territory. Approximately half its area consisted of the semi-arid plains of the Negev. One third was made up of the hills of Judea, Samaria and the Galilee, with some fertile but swampy vallies in between. The remaining area was taken up by both the narrow coastal plain, stretching along the Mediterranean Sea in the West, and the Jordan Valley following the River Jordan in the East [2].

Such a small area appeared to call for a national planning outlook, while the geographical diversity justified regional and local planning. The elongated shaped of the country, which resulted

in relatively long distances between major areas of settlement required multi-level transportation planning. Likewise, the climatological conditions and the unbalanced rainfall required an articulated policy of water distribution and drainage programmes [3].

Before and during World War I, Palestine was underdeveloped and underpopulated by any European standard. Historically the settlement pattern in Palestine followed two major axes, one along the ridges of the hill country and the other along the coast. It consisted of a few urban centres which were of ancient origin, and of numerous villages which created the agricultural characteristic of Palestine. The development of most of the towns and villages had never been systematically planned, but was the result of traditional organic evolution, influenced by the prevailing social and economic forces [4]. Rudiments of modern town planning can be traced in towns such as Jerusalem and Beer Sheba, where the Turks employed German engineers to provide basic plans, largely for a road system [5]. The few Jewish settlements which had been gradually established since the 1880's also demonstrated initial attempts at modern rural planning. However, Palestine of 1917, the year the British entered the country, can best be described as a devastated zone. Of limited attempts at physical modernisation in the past, almost nothing remained after World War I. The land was ravaged by military operations, neglect and general deterioration [6].

A good example to take to illustrate the physical conditions and the challenge they posed for modern planning and development is

that of the transport and communication system.

The transport infrastructure, always very poor, was virtually non-existent after World War I. The few roads which were paved were damaged by the military, as was the railway network which had been laid down in the pre-war era to link the main towns and create a connection with Constantinople and Europe. Palestine had no telephone service and the Turkish telegraph offices ceased to operate after the war [7].

Due to both human and natural disasters, the population of Palestine declined from approximately 790,000 before the war to approximately 600,000 by 1917 [8]. There are conflicting estimates as to the division of population at the outset of British rule. One British report [9] gave the following figures: Four-fifths of the entire population was Moslem and some 70,000 were Christians, largely belonging to the Orthodox Church. The Jewish community numbered 76,000. The urban population is estimated at 250,000, while the majority lived in large or small villages.

The various communities of Palestine developed side by side along parallel but separate lines. There was no integration between the numerous ethnic groups making up a cohesive society. Arabs were divided according to religious affiliation (Moslem, Christian, etc.), and between villagers and city dwellers. Their social structure was marked by the traditional base of family links. Their leaders were mostly those belonging to the oligarchy of property owners. At that time, the Arabs lacked any decisive Palestinian national identity,

independent of other Arab populations of the Ottoman Empire [10].

The level of social institutionalisation of the Jews was at that time only slightly different. The Jewish community was very much divided amongst itself between the old and new communities, the Orthodox Jews and Zionist pioneers, Jews from Europe and those from oriental countries, Ottoman citizens and those with foreign citizenship. Despite attempts to establish central communal institutions, these bodies lacked authority over the entire Jewish community [11].

With a population of only 600,000, planning in Palestine might seem to be a relatively easy task. However, the complicated social composition made it, even at that time, an extremely difficult matter, particularly because of its political implications.

The political problem which has loomed over this region for so many years had already begun to emerge by 1917 [12]. Without going into elaborate detail here, it may be said that the British were caught between the rival claims to Palestine. On the one hand, the Balfour Declaration of 1917 encouraged Jewish hopes for the establishment of a National Home [13]. The Arabs, on the other hand, in putting forward their claim an independence state, relied on the McMahon Pledge [14]. Since then, the conflict arising from these claims has dominated the history of the entire region and has led to bloodshed from civil strife and national wars [15].

Furthermore, for Britain itself Palestine was very important, both from the point of view of imperial strategy and the country's religious-cultural value. Due to its physical decay and poor economic condition, Palestine per se had no economic attraction for a foreign power. Hence Britain's main motive in becoming the Mandatory power was not direct economic profit, but rather strategic and political gain [16]. Strategically, Palestine was the eastern outpost against any potential threat to the Suez Canal and the route to India. It was the outlet of the oil pipeline from Kirkuk and was also a starting point for the desert route to Iraq. In addition, Palestine's special religious status and historical, archaeological and culture value made it a unique region [17]. It was thus of interest to the British public as well as to the rest of the Western world.

Palestine had a predominantly agricultural economy. The region lacked natural resources and the standard of living was extremely low. Swamps covered large areas of the plains due to lack of adequate drainage. Primitive methods used for generations dominated the type of agriculture. Industry and commerce were almost non-existent. In addition, the economy was in a state of total collapse due to the World War I and the currency was worthless. Agricultural land was left untilled, which led to total impoverishment of the population. Food shortage was widespread, leading to starvation and death [18].

In ancient times, Palestine had been a very fertile country and the current situation was the result of centuries of neglect which had destroyed the economy. The country's major requirement in order to renew and make use of its economic potential was physical and economic planning, financial investment and extensive development.

On the eve of British rule, Palestine was an outlying part of the Ottoman Empire, governed centrally from Constantinople. The territory did not form a single political or administrative unit, but was divided between the vilayets (provinces) of Beirut and Damascus, and the independent sanjak (region) of Jerusalem. Vilayet was divided into sanjaks which in turn were sub-divided into aqdiya (districts). Aqdiya included a main town and its environs. The smallest unit was the nahiya (rural district) containing a number of villages [19].

At the local government level, twenty-two municipal councils were established under the Provincial Municipalities Law of 1877 [20]. These existed in the major towns and larger villages. Mayors were appointed by the government and elections rarely took place. The rural districts established under the Vilayet Law of 1864 were supposed to have a council, but very few were in fact established. However, many district heads (mudirs) and heads of Arab villages (mukhtars) were local Arabs appointed by the government.

The Jewish settlements organised their own pattern of self-government, based on elected councils which were recognised by the Turkish rulers. However, the Turkish regime was despotic. Although formally Ottoman legislation did provide for some local participation through delegations to the Turkish Parliament, for the establishment of popular councils near the administrative units described above and for local authorities, in actual fact the local people had no real say in the government of the country [21]. In general, the Ottoman provincial authorities exercised strict control over the local institutions.

Land ownership and tenure, and restrictions on land use, were an essential factor in the development of Palestine. A short description of these might be of help in an understanding of the evolution of town and country planning [22].

Under the Ottoman Land Code [23], the land of Palestine was classified under five main categories. Most of the cultivated land was termed miru in which the State had the ultimate ownership. In addition, large stretches of uncultivated land, termed mewat was owned and possessed by the State. Land in public use, such as roads or common pastures was classified separately as metruka. Waqf land was land dedicated to the Islamic religions charitable trust. The remainder was privately owned land, called mulk. It should be

stressed that private land was very rare, except in the existing urban areas. Most of the land was publicly owned and, in practice, inhabited and tilled by tenants holding long or short leases. The rights of these leaseholders varied according to the class of land they possessed.

An Ottoman law provided for the registration of land [24]. This law also established land courts with jurisdiction in these matters. However, most of the land was unregistered and some, owing to misinformation or incorrect registration, belonged to more than one owner. Very often Arab villages had their land registered under communal ownership (musha'a), although it was actually divided between families according to informal agreements. This informal allocation of land was constantly changing.

This complicated system caused great confusion as to the real rights to the land, such as ownership and tenure. Yet the Ottoman system remained for the most part in force throughout the Mandatory period and for another twenty-eight years under Israeli law [25]. This was due to the difficulty of making reforms over this type of property right, owing to the importance attached to land in general, and to this country in particular. By contrast, the laws governing the use of land and its development progressed extensively after the Ottoman era, as shown below.

On the eve of British rule, the law in force included only a few elements of land use regulation and town planning [26]. Typical to the times, the transport network, of all physical planning matters, was of prime concern. The planning and construction of major roads and railways of strategic importance were matters for the government in Constantinople, while other roads and public utilities were dealt with by the administration of the vilayet.

At the local level, the Municipal Council was given powers, amongst other things, relating to the provision of streets and pavements, construction of public buildings, markets, water pipelines and expropriation of land for public use [27].

The Ottoman law as to provincial Municipalities dealt with construction and repair of roads, and the buildings alongside these roads. It prescribed that in cases of planning a new road, widening or changing existing roads, or the rebuilding of an area destroyed by fire, preparation of schemes for the above were the responsibility of the Municipal Council. A notice of such schemes had to be sent to any person interested in the land. Such person was given time to submit any objections. The final decision lay with the central authorities of the vilayet. Of particular importance was the provision which gave the authorities power to expropriate land without compensation of up to one quarter of an unbuilt plot, for the widening of streets or the rebuilding of a quarter.

This law also allowed the authorities to impose a charge on land owners whose land increased in value as a result of the widening or construction of a road. The money was intended as a contribution towards the cost of this work.

Other laws allowed the local authorities to impose some basic building regulations which were made compulsory in urban areas. The law also imposed strict controls over building operations. Building permits were required for the construction of individual buildings, as well as for new neighbourhoods. In cases of applications to change agricultural plots into residential land, the owner also had to contribute some of the land, without compensation, for public purposes. In other cases, expropriation of land was subject to compensation under the law of expropriation. However, despite these formal provisions, no systematic planning process existed and the control of physical development exercised by the officials was "looked upon as a revenue producing measure" [28].

The main force behind the development of Palestine throughout the Mandatory era was the Zionist and other Jewish organisations [29]. Their development activities did not begin in 1917, but gradually grew from the 1880's onwards [30]. The importance of their activities in the evolution of the Mandatory planning system justifies a brief introduction to their main bodies and their role in urban and rural development prior to World War I.

Since the last quarter of the 19th century, various Jewish bodies were involved in land purchase and settlement in Palestine. This was rooted in the long cherished dream of the Jews to return to Zion. The first agricultural villages (moshavot) were established mainly on the coastal plain [30]. They were smallholders' settlements, supported by Jewish philanthropists who set up the Jewish Colonisation Association (J.C.A.) to organise land purchase and to help the farmers. However, these early development activities were characterised by utopian plans and disorderly implementation [31].

The foundation of the World Zionist Organisation (W.Z.O.) in 1897 helped formulate in political and practical terms the ideal of the creation of a Jewish State in the Jewish homeland. Zionism was not just an ideology, but a highly programmatic and pragmatic movement. Its founder, Theodor Herzl, in his programme "The Jewish State", formulated a detailed plan including, inter alia, a centrally organised scheme of land purchase, town and settlement planning and systematic implementation [32].

Organisational tools for the realisation of this ideal included a WZO office in Palestine, established in 1907 and headed by Arthur Ruppin. Other bodies active in this realisation were the Jewish National Fund for land purchase and the Land Development Company for the planning and building of settlements.

The basic ideological principles underlying the activities of the Zionist bodies are of great importance in understanding the evolution of planning and development. First was a nationalistic perception of land development where the soil was to remain a public asset; second was the emphasis on rural rather than urban settlement, a literal expression of the ideal of returning to the soil. Development activities were also characterised by two sources of tension: the conflict between pragmatism and activism; i.e. between predetermined policy and proper preparation against the necessity to find solutions as quickly as possible; and between socialist views of national development and liberal perceptions of private initiative [33].

There was no shortage of plans for the development of the Jewish State, ranging from comprehensive all-embracing programmes of national land development to plans for particular villages or neighbourhoods. Though actual conditions often defied attempts to impose systematic plans, it is important to point out those major plans which did influence development in practice. These plans concentrated on systematic land purchase, physical planning or both [34].

To give just one example, the first important plan at a national level was that prepared in 1907 by Dr. Ruppin. In this plan he urged a concentrated effort of development in two major regions:

in the central Judean area to the coastal plain, and in the north in the Galilee-Tiberias region. He chose these regions due to the relatively high numbers of Jews living there: Thus in his view additional Jewish settlement would advance the political objective of Jewish autonomy in Palestine.

Dr. Ruppin described in detail the requirements of land purchase and Jewish immigration to achieve this goal. Aware of the numerous difficulties faced by the Jewish agricultural settlements in the area, he advocated urban as well as rural types of settlements and proposed the construction of industry as well as agriculture as a means of supporting the population.

On Dr. Ruppin's recommendations, the Palestine Land Development Company was established. Since the Ottoman legal and administrative systems inflicted many difficulties on Zionist activities, Zionist bodies adopted a pragmatic policy of purchase of any available land - urban and rural - and encouraged private initiative, in addition to its purchase of land for public ownership.

Notably the balance reflected by this plan between different ideologies and ways of life became in later years a highly controversial matter.

On the eve of World War I the land was already inhabited by 47 Jewish rural settlements of various types, ranging from communal and co-operative settlements to privately-held farms. Their total population was 13,000 and they owned 110,000 acres of land. The Jewish urban population was considerably larger, comprising some 60,000 persons, concentrated in the ancient towns of Jerusalem, Hebron, Jaffa, Tiberias and Sefad.

CHAPTER 2. PLANNING UNDER THE BRITISH MILITARY ADMINISTRATION:
THE PRELIMINARY STAGE OF STATUTORY PLANNING

The first British Administration in Palestine was a military one. It began formally on December 11, 1917, after the capture of Jerusalem [1], and lasted until July 1, 1920, when it was superseded by a civil administration. Military rule was generally a transitional form of administration which would continue until the future of the territory was determined. In the case of Palestine, this period of military occupation was prolonged due to the dispute between the Allied Powers as to control of the area. The Military Administration in Palestine was thus compelled to assume all the ordinary functions of a peacetime government [2].

Prior to giving a detailed description of the evolution of town planning in Palestine during this stage, the major conclusions of the period may be set out as follows:

- a) Town planning as a legal-administrative activity was not yet implemented during this period in any systematic or comprehensive manner. However, it had been introduced in particular places where it had far-reaching consequences for the future evolution of the Mandatory planning system.

- b) In comparison with the contemporary level of development of British town planning, the notion of planning in Palestine was very narrow. It was limited to architectural-aesthetic considerations of urban and rural areas and centred on conservation and building restrictions.
- c) The political role of town planning, which was to help the military administration impose law and order and establish authority over the local population, was the most significant during this period. Due to the policy of preserving the "status quo" in Palestine, the economic and social functions of town planning had little impact.
- d) Together with the first steps of statutory planning in Palestine, this stage saw the growth of unofficial, non-statutory planning within the Jewish communal institutions. This also strongly affected the evolution of the planning system in the following years.

Three levels of government were set up under the military rule: At the central government level, the departments of Finance, General (including Police), Commerce, Law, Public Health and Public Works were created [3].

At the regional level, the administration was carried out by military governors. They were posted to every region (district) as soon as that area was captured. By the end of the war, no less than thirteen administrative districts had been set up [4].

At the local level, the existing municipal councils were allowed to continue, but at the expiration of their periods of office their members were replaced by nominees of the military governors [5].

Town and country planning was not administered from the centre but, like most other civil matters, was left to the discretion of each governor. Physical developments of national importance were carried out centrally by the Public Works Department. They were by no means an implementation of predetermined plans, but were ad hoc reactions to immediate and pressing problems. In this way the gulf between planning preparation and actual physical development began in fact during this first period of military administration [6].

The fact that most of the staff of the administration had no previous experience of administrative work [7] was, paradoxically, a benefit in the area of town and country planning. The need for professional and experienced planners was quickly recognised, which led to the use of eminent British planners in the administration of Palestine [8]. In turn, this led to a speedier introduction of modern planning in that region.

The legal and administrative principles to be used in the operation of the administration, including its planning activities, were set down by the Commander-in-Chief General Allenby as follows:

"The system of administration will be in accordance with the laws and usages of war as laid down in chapter 14 sec. 8 Manual of Military Law and no departure from these principles will be permitted without the approval of the Commander in Chief. As far as possible the Turkish system of government will be continued and the existing machinery utilised ... Chief Administrators are reminded that the administration is a military and provisional one and without prejudice to further settlement of areas concerned. They are therefore instructed not to undertake except so far as may be necessary for the maintenance of public order and security any political propaganda or to take part in any political questions" [9].

In relation to these vague guidelines, one writer rightly says: "As the struggle between Arabs and Zionists intensified, British Officials in Palestine were inevitably drawn into situations demanding the exercise of political judgement and political decision. Eventually the Arab-Jewish conflict came to cover such a universal terrain of dispute that almost every official action or decision, however miniscule and however purely 'administrative' in nature, came to be regarded as having political implications" [10].

This was true in relation to policies and decisions in the field of town planning and development as much as in other functions of the administration. As the main pressure for physical and economic development came from the Zionist Organisations, politics was inevitably involved. Thus the stand taken by most officials regarding the political conflict was the key to understanding the deeds of the administration.

Although the government in London was at that time determined to give practical expression to the Balfour Declaration for the establishment of a Jewish National Home, the military administration was generally unsympathetic to Zionism [11]. It constantly resisted requests for further development of the land; indeed, it went further and issued a proclamation prohibiting the sale or distribution of land without official consent [12]. This was almost the first act of the administration. In accordance with its declared principles the military administration officially limited itself to the keeping of law and order - physical, social or economic progress was beyond its scope as it would violate the "status quo".

Nonetheless, some important developments were carried out by the military administration. These were effected mainly because of military needs, or because the existing conditions did not allow any delay. They included the improvement of the transport system by building new railway lines and repairing old lines, and the construction and repair of roads and bridges [13]. The authorities also provided water pipelines to Jerusalem and basic sewerage and drainage in a few places [14]. Moreover, the foundations of modern town planning in Palestine were laid at a local level during this period of military rule. Surprisingly it became one of the first deeds of the new administration [15].

Why did planning, amongst other important aspects of administration, receive such attention?

It is asserted that the answer is to be found in both the nature of the Holy Land and the nature of the military rule. A detailed explanation of this will be given by considering the particular case of Jerusalem.

A. TOWN PLANNING IN JERUSALEM

The main factor leading to the introduction of modern town planning, which also had a major and lasting influence on the essential nature of planning throughout Palestine, was the capture of Jerusalem.

Jerusalem was a unique city, not only in Palestine but the whole world. As a holy city for Jews, Moslems and Christians, it was of importance to millions of people throughout the world. It was an ancient city containing a wealth of historical monuments, unique architectural features and above all numerous places of worship. It therefore required special care for the preservation of its precious heritage.

On the day of the official entry into Jerusalem, which was the first day of military rule in Palestine, General Allenby issued a proclamation to its inhabitants. After declaring the imposition of martial law, he went on to say: "Furthermore, since your City is regarded with affection by the adherents of three of the great religions of mankind, and its soil has been consecrated by the prayers and pilgrimages of multitudes of devout people of these three religions for many centuries, therefore do I make known to you that every sacred building, monument, holy spot, shrine, traditional site, endowment, pious bequest, or customary place of prayer, of whatsoever form of the three religions, will be maintained and protected according to the existing customs and beliefs of those to whose faiths they are sacred" [16].

In this way, town planning began in Jerusalem soon after its capture. This was largely the result of the personal attention and care of two key figures: the Commander in Chief, General Allenby, and the Military Governor of Jerusalem, Colonel Storrs.

General Allenby had no desire to be involved in civil affairs and usually left these matters to his subordinates [17]. The preservation of Jerusalem was, however, an exception [18]. Furthermore, Colonel Storrs, who served as Military and Civil Governor for eight years, was passionately interested in the City and contributed a tremendous amount to its conservation and restoration [19].

Notwithstanding the continuous military operations against the Turks to the north of the City, General Allenby sent at that early stage for the then Town Engineer of Alexandria, McLean, to come and advise on the protection of Jerusalem's character and beauty [20]. On McLean's advice, a set of regulations was promulgated under Martial Law [21]. Its main provisions were:

1. A written permit was required from the Military Governor for any erection, demolition, alteration or repair of any building in or near the Old City.
2. The use of either stucco or corrugated iron within the walls of the Old City was prohibited.

3. Advertisements were prohibited, save on small authorised hoardings in commercial quarters.

Penalties were prescribed for contravention of these regulations.

Development control was at first the sole tool for protecting the fabric of Jerusalem. The guidelines for this control were contained in a provisional set of conditions which were accompanied by a provisional plan. Only a limited type of development was then allowed. This was subject to restrictive conditions relating to the height of buildings, their use, their location, their effect on the landscape and the external building materials used [22]. A final form of McLean's scheme was approved by General Allenby on July 22, 1918.

McLean's scheme was in fact the first modern scheme prepared for Jerusalem. It divided the City into four zones, with different levels of building restrictions. They ranged from a total prohibition of building to a limited form of development. The Old City, with its medieval aspect, was to be preserved and surrounded by a zone where no development was allowed. The north and east sides of the City were to remain undeveloped open space. The western area was intended as a built up area [23].

There is an assertion [24] that this plan "was intended to form a frame of postulates in principle and a strategic platform for development and building initiative and not as a solution to practical and definite projects". Furthermore this required "a system

of detailed plans that would translate the general plan into terms of development and building schemes and transform it from theory into practice".

This analysis should be accepted only partially; namely that the scheme was a general strategic scheme only with regard to that part in which it considered the future development of Jerusalem towards the western side while it was a detailed scheme with regard to its main subject; i.e. the Old City. The underlying concept of this scheme was preservation and conservation rather than future growth and development. This concept mirrored the thoughts of the Military Governor. As he wrote in his memoirs: "Early in March (1918) I borrowed the services of W.H. McLean ... not to plan so much as to bring out regulations which will at any rate preserve the unique character and tradition of Jerusalem" [25].

To this purpose, the scheme contained some guidance as to the work required for the conservation of the Old City and its walls. Of particular interest is a recommendation to the municipality that it make a list of buildings of special value and give its attention to the maintenance of such buildings [26].

Now to the second factor, that of the nature of the military rule. The powers of the military governors in Palestine in the administration of their particular districts, specifically in

planning and development control, were virtually unlimited. Colonel Storrs wrote about the first month in office: "My word was law. As there were no lawyers, judges or courts, it was the only law. Better for Palestine then, there were no newspapers. Legally and journalistically we lived in a State of Innocence" [27].

In view of the many problems which needed to be solved, these extensive powers unfettered by legal or bureaucratic procedures were described by Storrs as being very useful. This basic characteristic of the military rule - to execute "by a stroke of a pen" [28] allied with the use of legal and administrative tools of government - was fundamental to the speedy introduction of modern town planning. It also influenced the content and form of planning regulations and development control measures. They could be simplified and condensed: the unfettered discretion of the Governor enabled continual elaboration and clarification when the specific case required. The risk of arbitrariness and abuse cannot however be overlooked.

On his part in the administration of Jerusalem Storrs claimed: "I may have failed - worse than a thousand irregularities - in making the utmost use of the power I was given: I know I never abused it" [29]. His administrative work in the area of town planning (or rather conservation) may be seen as providing some justification for this assertion. Storrs, in spite of his absolute powers, realised that to make positive and even restrictive planning effective "the Heads and representatives of the Communities concerned should be interested and

consulted" [30]. He therefore founded the "Pro Jerusalem Society" which was modelled on the British National Trust, though it developed into a different type of body. The Society may be regarded as the first example of public participation in town planning in Palestine.

The objectives of the Pro Jerusalem Society were in general the "preservation and advancement of the interests of Jerusalem, its district and inhabitants" [31]. The Society, of which the Military Governor was the president, was however more than just an amenity group. It was a landmark in the planning of Jerusalem and Palestine as a whole. In the words of Storrs, it "became in effect the Military Governor civically and aesthetically in council" [32]. Financially the Society did not rely on the military administration. It managed to raise funds for its objectives from public organisations and private individuals in Jerusalem and throughout the world. To what extent this fact helped the Society take an independent stand in planning matters is difficult to determine.

The Society consisted of the most distinguished leaders of the population, as well as British officials. The Governor succeeded in assembling around one table the Mayor of Jerusalem, the heads of the various religions, the chairman of the Zionist Commission, the British Director of Antiquities, other British officials and leading members of the Moslem, Jewish and Christian communities. As Storrs wrote: "these differing and elsewhere discordant elements (were) bound together by their common love for the Holy City" [33].

Storrs appointed as his technical assistant the eminent British architect and town planner C.R. Ashbee, who served as Civic Advisor and Secretary to the Pro Jerusalem Society. The "discipline of civics", in Ashbee's romantic-idealistic view, was an integrated approach to city life embracing the techniques of architecture with the needs and the resources of the community [34]. Jerusalem provided him with a good opportunity for implementing his ideas of the "gradual ordering" of all resources in town development. However, by concentrating on the conservation of the Old City and the aesthetic aspects of planning rather than on constructive planning for the growth of Jerusalem, this opportunity must be regarded as having been wasted [35].

Ashbee was in practice also in charge of dealing with planning applications and on his recommendation permits were granted [36]. When an application touched upon questions of special architectural or archaeological value, the case was submitted for discussion to the Council of the Society before any decision was made.

After granting planning permission, responsibility for ensuring that its provisions were carried out was given to the Municipality. The Society itself was, however, also active in the enforcement of the law [37].

Development control and restrictive measures alone could not achieve the restoration and preservation of neglected buildings and the Walls of the Old City. More positive action was also required.

The Society was mostly active in this area [38]. Other contributions by the Society included the encouragement of the preparation of a basic survey of Jerusalem and granting of financial aid for this purpose. Such a survey was essential for the creation of a scheme and for the drawing up of detailed plans for future development.

The lack of essential data was first felt in the preparation of McLean's scheme. However, despite the requests of Ashbee and others, the Military Administration did not help in carrying out such a survey.

Town planning during these crucial years of military government was conceived mostly as a method of controlling development and securing the conservation of existing structures [39]. Architectural and aesthetic considerations were almost the sole concern of the administration. Town planning was therefore limited to its narrowest sense [40]. Rather apologetically, the Governor of Jerusalem wrote that his work "at least insure the temporary provisional Military Administration against the charge of encouraging or permitting vandalism" [41].

Planning policy was consistent with the official doctrine of the Military Administration, which was the preservation of the "status quo" until a permanent arrangement was made for the governing of the country. The essence of this doctrine, as it applied to planning, was to halt the advance of physical and economic

development. Actual development carried out by the government, or carried out by public bodies and the private sector with government permission, as limited to serving the needs of the army or the interests of the Administration [42]. The general result was a continuation of the frozen state of development.

This approach of the Military Government to town planning may be contrasted with that of Patric Geddes, as expressed in his recommendations for the improvement and development of Jerusalem [43]. Geddes had an original approach to the art of town planning [44]. He expressed his view when he wrote: "Thus the renewed art of town planning has to develop into an art yet higher, that of city design - a veritable orchestration of all the arts and correspondingly needing even for its preliminary surveys, all the social sciences" [45].

In 1919 Patric Geddes, an already famous planner, prepared a report and a scheme for Jerusalem [46]. In his work he practised his ideas of "bringing harmony to the physical economic and social complex of the city" [47]. His first months were spent on a "diagnostic survey" of the old and new parts of the city [48]. No other place of earth could have given him a better opportunity to follow his method of survey based on historical, geographical and sociological study. Geddes' report and scheme included, apart from conservation of the Old City (what he called "conservative surgery"), physical development on a large scale of the new Jerusalem: housing

in new garden suburbs, an extensive park system in the east and south sides of the city, cultural centres such as the Hebrew University on Mount Scopus and a National and Civic Museum. Under this scheme, the Old City was to become less isolated, but was intended to serve as a focal point of the new city. The scheme also specified different functions for various parts of the new and old city.

Geddes based his proposals on, among other factors, the prevailing requirements of all sections of the population [49]. This should be stressed, since it begins to reveal Geddes' approach to the political problem of Palestine. In the words of his biographer, Boardman, Geddes showed "understanding of, and respect for, the spiritual significance which Jerusalem has for Jews, Christians and Moslems alike. His desire to reconcile and evoke co-operation was as great as his urge to renew or rebuild. Whether it was a question of Christian monasteries, Moslem mosques or the Jewish Wailing Wall, he diagnosed and proposed treatment on a basis of equality and mutual respect among all civic groups" [50].

The military administration responded with a marked lack of enthusiasm. Geddes' ideas were far beyond its restrictive approach to planning. The shortsighted bureaucratic attitude of some military officers drew Geddes into conflict with them. From this emerged his pessimistic view of the future of the British administration.

Nonetheless, the effect of Geddes' work in Jerusalem was felt strongly in later years.

Thus under the military government all schemes were of a limited scope. A detailed development plan was not prepared during this period. "Zoning" as a method of detailed plan making was not employed by McLean or by Geddes. The explanation for this can again be linked to the provisional nature of the government and the consequent policy of preservation rather than planning for the creation of new urban areas. While detailed planning was recognised as essential to the future of the city, it was regarded as premature. Detailed planning could only result from certainty as to the political and economic future of Palestine. As Ashbee said: "Until we can see ahead more clearly we cannot zone, and until we zone we cannot make our town plan effective" [51].

There is an additional aspect to this negative approach to town and country planning during the period of military rule, where extensive use was made of development control measures. As pointed out, this administration was strongly opposed to the then pro-Zionist policy of the British government. Constant attempts by the military administration to persuade the government to change its declared policy were unsuccessful. The administration therefore used its administrative powers and discretion to limit Zionist activities as much as possible. In general this was achieved by invoking the status quo principle. This attitude of the military government was expressed in administrative fiats which prohibited Jewish immigration, prevented land transactions by refusing to re-open the land registries, and so on [52].

This attitude also affected town planning. The use by the military government of development control rather than positive development was also a result of this attitude. The main pressure for development came from Zionist activities. The halting of preparation of schemes for new development and the limitation of the scope of planning to the conservation of the existing structure can be seen as a method by which the military government carried out its own political fight against Zionism.

In other words, town planning was used to express the political aims of the ruling power. These aims were concerned with favouring those whom the administration regarded as the disadvantaged party in the Arab-Jewish conflict. Here again the ideological and pragmatic factors were of paramount influence.

This attitude did not deter planners within the Jewish community from looking into the future and proposing plans and programs for land development on a large scale in Palestine. At the same time, they understood that, due to the military administration's attitude, the implementation of any such plan would have to be delayed temporarily. The period of military rule in Palestine thus saw the preparation of many types of plans at different levels [53].

This was, of course, non-official planning activity, which was motivated by Zionist ideology.

The most striking example of such planning was Tishler's plan [54]. In 1919, Joseph Tishler, an engineer and town planner, published a revolutionary program for its time, though perhaps over-ambitious. The subject was the physical planning of Jewish land settlement in Palestine. In line with Zionist ideology of the Jewish return to the homeland, the plan was based on a population of five to six million. Of this, two-thirds was considered urban and one third rural. A basic element in the plan, for the development of the country as a whole, was the dispersal of towns and villages in accordance with regional planning policy. Tishler suggested the division of the country into geographical regions of about 150 square kilometres each. The planning of a region consisted of the development of urban centres, interrelated with their rural surroundings. The regional towns, conceived as "garden cities", followed Howard's philosophy and ideas [55].

In articulating the importance of a good communications network, green built-up areas, recreation areas and, above all, the functional links between the various types of settlements, Tishler was also influenced by economic and humanitarian theories. A central factor in this planning was the need to provide appropriate educational services. He thus determined the size of each type of settlement in accordance with the educational services provided.

As it is shown later, some of these ideas had a lasting influence and became part of Israel's planning policy. Yet when they were first published, they were in sharp conflict with the prevailing British policy of "status quo" and restrictive planning. In addition, they went beyond current pragmatic perceptions of the Jewish organisations and public. Tishler's plan is thus rightly classified by Reichman as part of a period called "the period of the big dreams" [56].

CHAPTER 3. PLANNING UNDER THE CIVIL ADMINISTRATION:
TWO STAGES OF STATUTORY PLANNING

On July 1, 1920, a civil administration headed by a High Commissioner superseded the military administration. The Middle East was then assigned to the governance of France and Great Britain. The Mandate for Palestine was, however, still under consideration. Due to various complications, among them disagreements between the Allied Powers, it was not until 1922 that the Palestine Mandate was given to Britain and confirmed by the League of Nations [1].

An International Mandate was then a new form of government by a state acting as a delegate or trustee of the international community and subject to the supervision of the League of Nations [2]. The Mandate for Palestine differed fundamentally from other mandates in its dual obligation: 1) to put into effect the Balfour Declaration on the subject of a Jewish National Home; 2) to safeguard the rights of the Arabs in Palestine regarding their self-government [3].

Despite the "general uncertainty as to the future of Palestine" [4] and the lack of firm legal-constitutional basis for British rule over it, the civil administration was carried on, from the outset, as if the granting of the Mandate to Britain was assured. Britain saw its position as the ruling power in this region secured for a

considerable number of years. British Imperial aspirations were well served by this ruling. The vagueness of the term "Jewish National Home" on the one hand, and the conflicting promises of self-government to the Arabs on the other, ensured that Britain would be involved in Palestine, if only to reconcile the rival parties.

The High Commissioner was both the representative of the Mandatory power and the head of the local government which was the organ of the Mandatory Power [5]. He carried out his executive functions through an administrative apparatus which was similar to those existing in British colonies. The High Commissioner presided over an Executive Council which was the highest administrative authority. Members of this Council were the Chief Secretary, the Attorney General, and the Treasurer [6].

The Civil Administration continued the centralised system of administration through the existing departments and also expanded their number by setting up new departments such as Agriculture and Fisheries, Education, Customs and Excise, Land Registration, Land Settlement and Surveys. This expansion occurred together with a reduction in the number of districts through amalgamation [7]. This centralised administration was a distinct change from the autonomy enjoyed by the military governors under the previous administration.

As for town planning administration, this developed through the years from the appointment of a town planner to advise the government to a Town Planning Advisor's Office under the Attorney General's Department and finally to an independent Town Planning Department [8].

The new administration was mostly staffed by officials of the previous administration [9]. This helped in the transition period and influenced the way the new administration operated in the initial stages. Under the policy of the first High Commissioner Herbert Samuel, local inhabitants were gradually given official positions [10]. In practice, however, no real political responsibility was entrusted to the local population [11].

A similar trend took place at the local authority level. The declared policy was to reestablish elected bodies which would replace those nominated under military rule. In addition, there was to be a gradual transfer of powers and responsibilities regarding local affairs to these elected bodies [12]. This policy was only slowly implemented [13]. Although a Local Council Ordinance was introduced as early as 1921, only limited powers were transferred to the local authorities, and the government officials retained overall control. British action in regard to self-government of the local population was therefore met by criticism from both Jews and Arabs [14].

The High Commissioner for Palestine was granted both executive and legislative powers, as given to all British colonial administrators. He was responsible to the Colonial Office in London and not to any elected body in Palestine itself. However, the first High Commissioner, Sir Herbert Samuel, attempted to provide for the participation of the local population in the legislative process. Soon after assuming office, he constituted an Advisory Council consisting of twenty-one nominated members (4 Moslems, 3 Christians, 3 Jews, 11 British officials) whom he consulted over any draft legislation. An attempt to establish an elected legislative council in 1923 under the terms of the Mandate and the Order in Council 1922 [15] (which was in fact a constitution for Palestine) failed because of an Arab boycott. From that time to the end of the Mandate the Advisory Council consisted solely of British officials [16].

In his five years in office the first High Commissioner was remarkably active as a legislator. No less than one hundred and fifty Ordinances were enacted. These new laws gradually replaced the archaic Ottoman laws and became the basis of a modern system. On the other hand, they ensured extensive government control over almost every aspect of life in Palestine. The granting of almost unfettered discretion to the bureaucracy was a hallmark of this legislation. Nonetheless, these wide-ranging governmental powers were in principle, though not in effect, distrusted by Sir Herbert Samuel. In

a private letter to Lord Curzon he wrote: "I have to be on my guard against the tendency of every new and active administration to be too 'efficient'. There is a disposition among the departments to trop de zele sometimes. I don't want this country to be a land flowing with licensed milk and registered honey" [17]. However, despite the feelings of the High Commissioner, the colonial tendency prevailed.

Surprisingly, among all the matters which required modern legislation in Palestine in the early 1920's, it was town planning and control over the environment which received remarkable attention [18].

The very first enactment of the civil administration was the Advertisement Ordinance 1920 [19] which controlled the display of advertisements throughout Palestine. The Antiquities Ordinance for the conservation of ancient monuments was enacted in 1920 [20] and in early 1921 the first Town Planning Ordinance was added [21].

The speedy introduction of this legislation was largely due to the influence of some eminent figures of the "official classes" [22] in Palestine. With this legislation an attempt was made to adapt modern English environmental laws to the particular conditions prevalent in Palestine [23]. Some personal attitudes of those involved in their introduction can be seen in various aspects of this legislation. For example, the Advertisements Ordinance 1920 was enacted at a very early stage because of the interest shown by the High Commissioner. In his memoirs Samuel commented: "I had always felt strongly about this vulgarisation of modern life everywhere and

was glad to be able when I was Under-Secretary at the Home Office to help the passage of the first statute in Great Britain for checking the abuses of public advertising" [24]. He therefore took great pride in his role in making Palestine "one of the few countries in the world whose scenery and historic sites and buildings have remained unspoilt by the intrusion of advertisements" [25]. The Pro-Jerusalem Society, and particularly Storrs and Ashbee, were obviously among those who pressed for the introduction of this law which was in fact the application to the entire country of a regulation which had related solely to Jerusalem [26].

The Antiquities Ordinance 1920 was yet another measure whose introduction was stimulated by leading members of the Pro-Jerusalem Society [27]. The preservation of archaeological sites in Jerusalem was one of the main concerns of the Society ever since it was established; hence its calls for a new comprehensive law which would replace the Military Government proclamation on the subject.

The Town Planning Ordinance was enacted and already operational by February 1921. The first draft of this ordinance was the outcome of discussions held by a small group of people with very different views on the matter. Among them were the Administrator Storrs [28], the town planners Geddes and Ashbee, Ruppin, head of Zionist development activities and Attorney General Norman Bentwich. Once modified after consideration by the Advisory Council [29], their draft was approved by the High Commissioner [30]. Further changes were made on the recommendations of the British Colonial Office, to which the draft was sent before coming into force [31]. Judging from

the different backgrounds, professions, experience and conceptions of those involved in the making of this law, it is not surprising that the end product was planning legislation which encompassed so many varying philosophies, ideologies and world perceptions. These are outlined here and elaborated throughout the following chapters.

The basic philosophy of this law was dictated by the colonialistic-paternalistic concepts of the Mandatory Government, although it did introduce some liberal and progressive concepts, particularly in regard to state intervention in private property. It espoused a managerial-executive approach to planning implementation, while at the same time allowed for a limited degree of local participation in the planning process. It allowed room for social and economic consideration, though the guidelines for planning control were expressed in spatial-physical terms. However, more than anything else, the planning law was a regulative tool for the imposition of law and order and, in turn, for the institutionalisation of the government's authority over the local population.

It is argued here that the swift introduction of the planning legislation was influenced by the pressure put by the Jews to start large scale physical development in Palestine. It seems apparent that the legislator had in mind the new existing market forces which were determined to introduce and implement considerable changes in the

physical fabric of the country. Given the general apathy of Arabs towards land development, it seems obvious that without these new Jewish forces there would have been no need to deal with this planning legislation or at least to give it the priority it was given.

The idea that some State control over the use of land is necessary in order to overcome the problems created by free operation of market forces was widely accepted in Britain, Europe and the United States in the 1920's. This idea, when applied to the local circumstances in Palestine, was taken much further. The scope of State intervention in the way land was used was expanded to include the power of restricting or impairing the activities of one sector, the Jewish, and the encouragement of another sector, the Arabs. Such use of planning powers for the advancement of political objectives should be regarded as revolutionary for its time. The law of Palestine which is now being discussed provided the central government with extremely wide powers, hitherto unknown in Britain, Europe or the United States.

CHAPTER 4. THE FIRST STAGE OF STATUTORY PLANNING: 1921-1936

A. TOWN PLANNING ORDINANCE 1921

The first comprehensive enactment introducing modern statutory planning to Palestine was the Town Planning Ordinance 1921 [1]. This was a professional and advanced piece of legislation for its time. Written plainly and clearly in a concise form [2], it dealt with the subject in a logical order, embracing the most important components required for the introduction of a new planning system [3].

The Ordinance was influenced [4] by English planning concepts existing at the time, together with their expression in the Housing, Town Planning Acts of 1909 [5] and 1919 [6].

The English planning law as it stood in 1921 was 12 years old, yet it was still at an elementary level of implementation. This law attempted to remedy those environmental deficiencies with which other laws were unable to deal [7]. However it tackled the matter in a hypercautious manner; hence its failure to introduce any substantial changes in the existing situation [8].

Four significant aspects evident in the then English statutory planning formed the main differences between this system and the one introduced in Palestine. First, the planning law of Britain was the product of a democratic society. The result was a long and rather cumbersome procedure of democratic decision making [9]. Second, the

prevailing attitude was that of great respect for private property rights, often at the expense of potential opportunities to improve the conditions of the public in general [10]. This resulted, among other things, in the securing of these rights by means of compensation [11], which heavy burden often ruled out any effective planning. Third was the principle of minimum government intervention in the development market, making the positive steps which the authorities were willing to undertake, regarding the areas most in need of improvement, of a very limited nature [12]. Fourth, the hesitations and doubts as to the capability of the newly established town planning profession were significant enough to narrow the scope of the English planning law. The law was applicable mainly to undeveloped suburbs and emphasised the physical components of the environment rather than the treatment of many aspects of life in general in the town [13].

The following description of the Town Planning Ordinance of Palestine 1921 reveals how much - or rather how little - of the English model was in fact adapted to the planning system of Palestine.

As this Ordinance continued to have a strong influence on subsequent legislation of the Mandatory era and even in Israel, it is essential to analyse it thoroughly. Emphasis is placed on the institutionalisation of town planning machinery and process, the content of the planning norms and the implementation of the system. The evolution of the system to its present form is shown in the subsequent chapters.

1. Planning Administration under the 1921 Ordinance

The first part of the Ordinance detailed the organisational framework of the Mandatory planning system. Planning was administered by newly established machinery with little reliance on administrative bodies inherited from the Ottoman Rule. Consequently the membership of some institutions was detailed in the Ordinance itself, and not left to the internal arrangement of the executive [13A].

Compared with the English system of the time, the two most significant aspects of the Mandatory planning administration were its dominance by central government and the extensive powers, given particularly for the implementation of schemes.

Town planning in Palestine did not develop from a town planning movement or from the demands of local authorities, as was the case in England [14]. The Mandatory planning system was imposed from above. In fact, the majority of the local population of Palestine was barely aware of the effects physical planning could have on their lives. Furthermore, they did not see in it a feasible solution to the physical problems of the country. As one senior official wrote: "In this matter Government was certainly in advance of public opinion and had in consequence to cope with many hindrances" [15]. This probably gave the government the justification for the adoption of a paternalistic pattern of planning machinery which largely denied any local participation in the decision making process. A striking example of this was the reluctance to adopt the English model of

"public local inquiries" into the Mandatory planning law. This attitude on the part of the government was consistent with the general colonial approach which pervaded many of its administrative activities. There was a concentration of power exercisable by the government and which pervaded all stages, level and institutions of the Mandatory planning system [16].

In Britain, planning powers were more openly balanced between central and local government. This was true also with regard to the Continental-German planning system [17]. Planning was perceived as a matter for local authorities while the government was expected to supervise and control their activities. Furthermore, under the 1909 Act, the two tiers of government were placed in turn under the direct supervision of the Houses of Parliament [18]. Although this Act empowered the Local Government Board [19] to make substantial planning provisions regarding preparation of schemes, in practice the Board did not propose any such regulations and the content of the planning proposals was left to the initiative of local authority. Even a decision to prepare a scheme was discretionary, yet when local authorities decided to take such steps, they required the government's consent.

The subsequent planning act of 1919 made the preparation of schemes obligatory for local authorities above a certain size [20]. Under the same law, smaller authorities were freed from the need to obtain permission from the government for the preparation of schemes while the Minister was granted the necessary powers to require such schemes to be submitted [21]. The direct supervision of the Houses of

Parliament was also abandoned [22]. The balance between central and local government in the preparation and approval of schemes remained much as it had been under the 1909 Act. This balance, as mentioned, was not adopted by the Mandatory legislator.

The second significant aspect of the Mandatory planning administration was the active role it played in the implementation of schemes. Under the law, the administration was expected to take over managerial as well as regulatory functions, at least in relation to development for public purposes. Any scheme could provide the planning institutions with "special powers ... for the purpose of carrying out the general objects of the scheme" [23]. The scheme could also detail the "special conditions for the exercise of such powers regards notice or otherwise" [24]. The Ordinance provided for the obtaining, by the planning administration, of the resources necessary for public development. Finance was to be secured by means of a betterment tax and other payments by landowners [25]. Land could be obtained by expropriation [26]. The administration thus had the power to become deeply involved in the operation of the market. Such extensive governmental powers were in opposition to the liberal attitudes then prevalent in Britain which believed in government intervention only as a last resort [27]. The extensive powers of the Mandatory administration, however, could be explained partially by the weakness of the local private sector. They were also based on the colonial concept of the role of the Mandatory administration [28].

Planning institutions were structured in Palestine in four tiers, as follows:

- | | |
|-----|---|
| I | High Commissioner for Palestine |
| | :
V |
| II | Central Building & Town Planning Commission |
| | :
V |
| III | Local Building & Town Planning Commissions |
| | :
V |
| IV | Municipal Councils |

a. The High Commissioner for Palestine

At the top of the hierarchy was the High Commissioner for Palestine. In this way, the head of the entire British Mandatory administration had the ministerial responsibility for this particular subject [29]. Since the responsibility for planning lay with the High Commissioner, this added to the importance and the strength attached to the regulation of land use. The concentration of extensive power enabled him to cover the functioning and implementation of planning. Further, his responsibility for the entire administration in Palestine enabled him to co-ordinate town planning with other government policies. On the other hand, it could easily lead to the use of planning powers for a policy not explicitly sanctioned by the Ordinance.

Control Over the Organisation: The High Commissioner controlled the composition of the planning institutions. He was granted the power to choose the members of the second tier (the Central Commission) [30] and although the law imposed the duty to establish this body, it allowed the High Commissioner total discretion as to the number of members, their qualifications and their period in office. He could terminate appointments at any time and replace any member. The High Commissioner also had to approve any delegation of power from this commission to any person or body [31]. In effect, control over this important commission was totally in the hands of the High Commissioner. In addition, he also had indirect control over the composition of the lower tiers (the local commissions). These latter bodies were established in every area which the High Commissioner declared a "town planning area" [32]. This power to make such declarations and to designate the boundaries of such areas could influence the composition of the local commissions. It could also be used to influence the distribution of functions of the fourth tier (Municipal Councils) [33].

Control Over the Content of Planning: Any proposed scheme had to be approved by the High Commissioner [34]. His power to approve inherently included the power to refuse, alter or impose conditions upon the scheme [35]. For this purpose the High Commissioner was furnished with the proposed scheme together with comments and objections made hitherto in the scheme preparation

process [36]. His power of approval was not limited to the original scheme but also applied to any modification, suspension or annulment of any schemes [37]. Furthermore, any subsidiary legislation containing more details as to the content of planning had to be approved by the High Commissioner [38].

Control Over Development: In addition to the regulative planning process and by virtue of his pre-eminent position in the administration (both in planning and generally), the High Commissioner had the opportunity to allocate government resources for positive planning.

Such allocation could not only lead to extensive physical development for public purposes, but also become a catalytic agent in the operation of the local private sector.

This centralised control of the High Commissioner with its concomitant risk of abuse was in stark contrast to the British position where power was more dispersed. This was characteristic of colonial rule as opposed to that of a democracy. It is clear that in such circumstances the personality of the High Commissioner and his attitude towards planning could have significant impact on the operation of statutory planning.

b. Central Building and Town Planning Commission

The 1921 Ordinance prescribed that a Central Building and Town Planning Commission be established by the High Commissioner [39]. It could be regarded as part of central government rather than as an independent entity. Most aspects of the planning process came within the jurisdiction of this body; among them, planning functions of a legislative, executive and quasi-judicial nature.

This commission had a role in establishing the lower tier of local administration. It made proposals as to the geographical areas to be covered by statutory planning, namely Town Planning Areas [40]. Once such Areas were declared, the central commission had the power to initiate the establishment of a Local Building and Town Planning Commission for each Area and to appoint some or all of the members of each local commission as the Ordinance prescribed [41].

The law made the central commission in charge of the preparation of schemes for each local area. Although these schemes emphasised a local approach to the use of land, they were not prepared locally. This centralised preparation of schemes could, in theory, help to co-ordinate the planning and development of neighbouring areas and thus become the first step towards regional and national planning. However, a major problem with such an organisation was that this body was remote from the areas covered by the schemes and was unable to appreciate local problems and requirements. In an effort to overcome this problem, the Ordinance

imposed a duty upon local commissions to provide the central commission with the necessary details concerning local issues [42].

Subsidiary legislation, which was another legal tool for the prescribing of planning norms, was initiated by the central commission. However, like statutory schemes, it needed the approval of the High Commissioner [43].

The central commission was also to serve as a final appellate body from the local commission when planning permission was refused [44]. It was also a superior authority to which planning applications could be transferred if two members of the local commission so required [45]. Since two members of the local commission were appointed by the central commission, they could be used by the central commission to "call in" applications.

The central commission could initiate steps towards securing implementation of schemes through its executive functions. The commission could determine if and when to expropriate land and to carry out development for public purposes [46]. It had the power to supervise the process of expropriation and the financial side of compensation. The authority which operated under the central commission in respect of expropriation and public implementation was the Municipality, yet the central commission had default powers in respect to these functions.

To sum up, this commission played the key role in the entire planning process, a situation unprecedented in the then English planning administration [47]. In fact, only minor tasks in the planning process were left to the lower tiers.

c. Local Building and Town Planning Commissions

In each declared Town Planning area a local town planning commission was established [48]. Its composition depended upon whether or not the area included a Municipality.

In the latter case, the Ordinance prescribed in detail the composition of the commission, which included a majority of representatives of the central government: the district governor or his deputy together with another two members appointed by the central commission. It also included representatives of the local population (two members appointed by the Municipal council) [49], and two professionals employed by central and local government respectively, the Public Health Officer and the Municipal Engineer. Once established, the local commission had at its discretion the use of power to co-opt as members representatives of amenity groups [50]. This last provision may be considered as an advanced form of public involvement in the planning process, despite the fact it was only discretionary.

Planning areas where there was no Municipality were considered of secondary importance; thus the composition of the local commission was left to the discretion of the central commission. The Ordinance provided no guidance for the composition of the second type of local commission [51].

It is important to note that local planning commissions were new legal entities introduced by the Ordinance and were separate from the existing elected authorities. Although the Ordinance declared that the local commission "shall be a committee of the Municipality" [52], this was only a formal organisational arrangement. The composition of, and powers given to, the local commission made it legally and functionally distinct from, and in planning matters superior to, the Municipality [53]. Thus, for example, the local commission could, with the approval of the central commission, require the Municipality to carry out planning tasks specified in the Ordinance [54].

It was the duty of each local commission to submit information concerning its area to the central commission [55]. In doing so the local commission could indirectly initiate planning and development and influence the planning process at this crucial early stage, although it was actually working in an advisory capacity only. However, more important functions of local commissions related to the stages after the scheme was approved. These included the financial aspects of taxation and compensation, and the performance of development control and enforcement of the scheme.

The local commissions were put in charge of collecting betterment tax which was used mainly for covering the cost of implementing a scheme. In addition, they had to deal with compensation payments for expropriation and for "planning blights" [56]. The commission was given minimum discretion as a "licencing authority" in respect to development control. This resulted from a provision that a permit could only be granted if the "work contemplated fulfills the requirements of the scheme" [57].

However local commissions were in practice dominated by central government representatives and can be seen as yet another agent of the Mandatory administration.

d. The Municipalities

The fourth tier was comprised of the Municipalities. These were left with only a very limited role in the planning system. Their tasks, as prescribed by the 1921 Ordinance, corresponded more with the attitude that the Municipalities existed to serve as "the means for carrying out the general requirements of the Administration" [58] rather than as institutions of local government serving as "the collective mouthpiece of the people" [58]. The Municipalities were in charge of carrying out expropriation of land for public purposes when required to do so either by the central or local commission [59]. The Municipalities had almost no discretion in this function. Even the negotiations with landowners as to the means of compensation were, by

law, to be supervised closely by the central commission [60]. Further, in town planning areas where no Municipalities existed, these functions were given to the central planning commission.

The Attorney General, Norman Bentwich, who served as the chairman of the Central Town Planning Commission, expressed a typical British colonial approach when he wrote: "In order to preserve the amenity and character of historical cities like Jerusalem, Bethlehem and Tiberias it is necessary that the ideas of local authorities as to development should be controlled and that the planning of new quarters should be entrusted to competent persons. The government too has its advisor a town planning expert ..." [61].

It must be admitted that the granting to the Municipalities the task of preparing schemes would have been a meaningless exercise: since even in England local authorities then lacked qualified staff and had no political or technical tradition of town planning [62], @a fortiori@ the local authorities in Palestine were equally ill-equipped for the job. Even central government was unable to fill this vacuum. On the other hand, no real attempt was made to involve elected Municipalities or their members in the determination of policies and the preparation of schemes, which was the task of the central government alone.

2. The Statutory Scheme Under the 1921 Ordinance

The scheme was the main legal instrument used for the imposition of binding planning norms and had the force of legislation. While in England it had the force of primary legislation [63] and hence could supersede any Act of Parliament [64], under the Mandatory Ordinance the scheme was merely subsidiary legislation and was subject to primary legislation [65]. In fact, however, this was more a formal than practical difference.

A significant aspect of the statutory scheme under the Mandatory Ordinance was the authority to deal with an entire city/town/village and to cover a whole range of land use matters at a highly detailed level. Another important factor was the managerial powers which could be granted for the implementation of schemes. Thirdly, the preparation of schemes was voluntary and was at the discretion of the central commission.

By comparison the statutory scheme under the English law at that time was far more limited both in its spatial application and the means it could secure for its implementation. Development schemes under the 1909 and 1919 Acts were generally confined to unbuilt areas and thus could not treat a town as a whole [66]. They were also not intended to deal with any but urban areas [67]. Furthermore, such schemes were based on the assumption that implementation was not a matter for government institutions but for private or public enterprises and they concentrated mainly on the regulation and

co-ordination of market forces [68]. Under the English 1919 Act, however, the preparation of a scheme was made obligatory for all boroughs and urban districts with a population of 20,000 or more [69].

Since, under the 1921 Ordinance, the scheme was allowed to provide for the introduction of new planning in built up areas, this gave greater freedom to planners. At the same time the interests of private landowners in existing built up areas did not play a significant role in the preparation of schemes. On the surface this could be explained as being necessary in the then devastated and almost deserted territory of Palestine, where any previous development was of extremely poor quality. However, in fact these powers enabling the administration to override existing interests can be regarded as tools for the redefinition of a socio-economic order in a manner dictated by the administration alone. As a consequence, the State could not only intervene in the operation of the development market, but also in the distribution of land ownership and thus the whole social structure of the country.

The Ordinance allowed for the inclusion of four main groups of planning matters in the scheme:

- I. Provisions as to the use of land.
- II. Provisions as to the rearrangement of plots of land and their ownership.
- III. Provisions for the construction of public utilities.
- IV. Provisions for allocation of powers and resources for implementation.

I. Provisions For Use of Land: This followed the list of matters forming part of the Fourth Schedule to the 1909 Act. It included wide ranging aspects of physical land use. The Ordinance explicitly mentioned the technique of "zoning" as a method for segregating land into areas of different uses [70]. The scheme could then detail the appropriate use for each plot of land [71]. It could assign land for public use such as roads, schools, hospitals, recreation areas, etc. [72]. It could regulate the use of existing buildings, including prescribing alteration and removal of any existing structures [73] and could also impose extensive conditions and restrictions in regard to the erection of new buildings [74].

II. Provisions for Rearrangement of Plots of Land: These were exclusive to the Mandatory system and were in sharp contrast to English principles of protecting property rights and minimising government intervention. The Mandatory scheme could impose reallocation of plots and alterations to boundaries of existing plots [75]. These wide powers included transfer of ownership from one owner to another; allocation of land to an owner whose land had been assigned for public use, and the creation, with the consent of the owners, of joint ownership of newly constituted plots.

The power to reallot land was not intended as another method of expropriation, but to enable the authorities to overcome the difficulties of disparate ownership of small plots. In practice, however, this power could be used as a method of expropriation, thus changing the balance between public and private land ownership.

It is worth noting that such rearrangements could be imposed, in general, without the consent of the landowners subject to the rules of compensation for limited kinds of "blight" caused by the scheme.

III. Provisions for Construction of Public Utilities: These provisions expressed the active side of the Mandatory scheme as a tool for organising development. The scheme could include not only regulations as to land use and co-ordination of private development, but also contain provisions for the actual construction of projects for public purposes. Such provisions could include the construction of road networks, buildings and structures for public use, and utilities such as drainage, sewerage, water supply and lighting [76].

Although such provisions were not excluded from the English scheme [77], English legislation did not emphasise these active aspects as much as the Mandatory Ordinance. In England the mechanism of the private market was accorded prime importance in the carrying out of such developments. In Palestine, however, the private sector was weak and unable to carry the burden of initiating public developments. Hence the need for public intervention on a wide scale. Again, the risk attendant upon such intervention should not be overlooked.

IV. Provisions for Powers & Resources for Implementation: These provisions added to the practicality of Mandatory schemes, enabling the construction of public developments by allowing the addition of special provisions to the scheme. These were in addition to the more extensive provisions prescribed by the Ordinance itself which were of general application.

The scheme could allocate particular powers for implementation to the Central or Local Commission or to the Municipality [78].

The estimated net cost of the scheme had to be included [79]. The recovery of money to meet that cost was arranged in the Ordinance. Part of the cost, however, which related to construction or alteration of roads or streets could be met by special payments imposed by the scheme itself [80].

These measures emphasised the aspect of the Mandatory scheme as a tool for rational implementation, at least in relation to public projects, rather than as a list of pious hopes whose fulfillment was dependent on the whim of market forces.

a. The Form of the Scheme Under the 1921 Ordinance

The form of the statutory scheme was influenced both by its content and objectives. The framework for prescribing the scheme's provisions was not explicitly expressed by the Ordinance, though it could be deduced from the various articles of the Ordinance together with the Rules and Instructions issued by the central commission [81]. The Ordinance required that "the scheme shall in all cases be accompanied by a plan or plans of the area" [82]. This was aimed primarily at the definition of the geographical boundaries of the areas covered by the scheme [83] and to ensure a description of existing developments in the area. The proposed planning had to be presented in the following types of documents: map, report and, when necessary, a draft set of by-laws [84].

The map was the main means of providing a detailed account of how the area should be developed. It had to detail the appropriate use for each plot of land [85], and to specify which land was required for public purpose and the developments which were to be carried out [86]. It had to specify the utility services and infrastructure [87]. If a scheme included rearrangement of plots of land, the changes in the boundaries of the original plots had to be shown [88].

The report was intended to provide additional information in the form of written regulations. It had to include a list of landowners, the land proposed for expropriation, special requirements for water supply and drainage, etc.

The purpose of the draft by-laws, when necessary, was to indicate which special powers should be used for the implementation of the proposed scheme, which were vested with the planning authorities.

By its very nature the statutory scheme was extremely rigid. It was based on a static concept of planning which prevailed in Britain at the time [89]. Town planning as a process which demands constant review and modification of its content was far from the attitude conveyed by the 1921 Ordinance or by the existing English planning legislation [90].

Although the systems in England and Palestine both provided the legal means of modifying an approved scheme, these were not regarded as more than the means for modifying statutory norms prescribed in primary or secondary legislation.

The result in both countries was that statutory schemes became out of touch with reality after a short time. They took a separate course and the gap between statutory planning and land development was increasingly widened.

There was actually nothing explicit in the Ordinance to prevent the inclusion of general provisions, policies or principles guiding decision making as to future development, but neither was there any encouragement to do so. In any case, such a general approach could not substitute detailed schemes containing specific rules.

b. Planning Objectives and Relevant Considerations Under the
1921 Ordinance

The Ordinance did not define "planning" nor did it prescribe its limits. However the preamble which is unique to this planning legislation may help - together with the Ordinance itself - to divine the official purpose of statutory planning at this time. It stated:

"Whereas it is desirable to secure the orderly planning of towns and to control the erection of buildings and the layout out of streets within certain areas with a view to securing the proper development of such areas in the interests of public health, the amenity of the neighbourhood and the general welfare of the community" [91].

From this preamble it is understood that statutory planning employed two kinds of legal processes. One was a process of "orderly planning" and the other was "control (over) the erection of buildings and laying out of streets within certain areas". These were complementary measures. The former implied the preparation of schemes to substitute present chaos in town growth while the latter implied imposition of restrictions and regulations to secure the implementation of the schemes, or at least to prevent deviation from them.

These means were intended to serve goals which were expressed in physical terms; namely "proper development". This means first and foremost the arrangement of physical elements such as roads, buildings, structures, open spaces, etc. However, pure physical planning could not be an end in itself. Clearly it had a meaning only in the context of human use of the physical environment. Hence the Mandatory Ordinance explicitly proceeded further to goals which were expressed in general terms. These included "public health, amenity of the neighbourhood" and more vaguely "the general welfare of the community". These social values were, in turn, the criteria for the achievement of "proper development". The social goals, although the ultimate objectives of statutory planning, had to be substantiated in terms of physical regulations (land use). However, since they were central to the essence of planning they could be regarded as relevant considerations in planning decision making. Unfortunately such social values were vague and open to many interpretations. Consequently those who made the interpretation, namely the central commission, had even wider powers which were open to abuse.

In his explanation of the expression of the ideology of public interest in British town planning, Professor McAuslan wrote: "Town planning became an activity which depended upon the wisdom and integrity of the officials to act in the public's best interest" [92]. Since in Britain the notion of public interest and its

realisation by the administration was controversial a fortiori the use of such open-ended considerations and unfettered planning discretion in the political circumstances of Palestine gave rise to endless controversies.

In regard to the social aspects of planning, the Mandatory Ordinance went further than English legislation. The 1909 Act stated the objectives of the scheme as securing "proper sanitary conditions, amenity and convenience in connection with the laying out and use of land, and of any neighbouring lands" [93].

These objectives resulted from social problems which ensued from unsanitary conditions, overcrowding and the disorderly rapid growth of towns in England. Professor Ashworth in his criticism of the 1909 Act said: "It was concerned only with the physical layout of land and buildings: the social considerations which might guide that layout were left either to be disregarded or to be sought empirically for every separate scheme" [94].

Cherry [95] on the other hand saw these prescribed objectives differently. In his view the combination of housing and town planning in the 1909 Act was a "community based approach" which involved "a comprehensive exercise with integral social objectives".

No doubt the social aspects of planning were in the minds both of those demanding the planning legislation and those responsible for its provision. In practice, however, the way the law was implemented at the time in England corresponded more to the view of Ashworth, who saw it as restricted in application to physical planning.

To sum up, the planning Ordinance of Palestine was more general in its goals, though the precise ambit of social considerations was far from certain.

3. Positive Implementation Under the 1921 Ordinance

An attempt to link schemes and their realisation was well evidenced in many provisions of the 1921 Ordinance [96]. Although radical in comparison with existing English legislation, the steps that could be taken towards positive planning were of a limited form. These steps could secure the accomplishment of only limited parts of the scheme, although sometimes they did enable considerable progress in that direction.

Implementation of a scheme required positive steps by both the public and private sectors. The public sector's primary concern was with public developments and infrastructure; the private sector concentrated on private development. Nevertheless the two sectors still required co-operation from one another for their respective activities.

In relation to the public sector the scheme could provide for the supply of two main resources needed for implementation: land and finance. Land for public use could be obtained by expropriation under the terms of the Ordinance [97]. The central and local commissions could require municipalities to carry out expropriation [98]. The central commission could also postpone the completion of expropriation until the land was needed for the implementation of the scheme. In this way central government dominated the initial stages (i.e. expropriation) of public development [99].

Compensation for such requisitions was either agreed upon between the parties or payable in accordance with the provisions of the Ordinance. In the latter case, the Ordinance did not follow the English liberal principle of market value [100] but imposed an arbitrary ceiling value on compulsory purchase [101].

A far more radical provision enabled expropriation of land without compensation for the purpose of constructing or widening of roads and streets [102]. The origins of this provision, as mentioned, were in the Ottoman Land Code. The 1921 Ordinance somewhat limited its application to circumstances where the land concerned was not yet developed and where expropriation left the rest of the plot suitable for any construction as the scheme permitted. In spite of these limitations, this provision provided the authorities with its most important tool for positive implementation, albeit at the expense of private landowners.

The financial cost of the scheme and its implementation was to be met by means of a betterment tax. The recovery of this tax by the local commissions was a duty imposed by law [103]. Further positive steps to be taken by central or local commissions or the municipality for carrying out development were at their discretion, though legal powers enabling them to act could be set out in the scheme itself. Although the major part of public implementation was discretionary, the law envisaged that public authorities would assume a managerial role in development.

The Mandatory Ordinance was in theory interventionist in respect to the private sector's share in the realisation of schemes. It enabled the imposition of duties upon the private sector to erect, alter or demolish any building or other structure [104]. In theory such duties could be enforced by the authorities when executing the works themselves and recovering the expenses from the private individual. These powers were exercisable when a delay in execution of work prejudiced the efficient operation of the scheme [105].

The English planning law did not authorise similar powers for compulsory purchase of land [106]. Even the powers for "the execution of any work which under the scheme or this part of this Act are to be executed by a local authority" [107] were rarely used in practice. The private sector was expected to carry out actual development in England. Default powers were given to the authorities in cases where the landowner or other person did not himself carry out any erection or alteration of any building [108]. However, very little use was made of these provisions.

4. Development Control Under the 1921 Ordinance [109]

Development control was the second measure which, together with a scheme, aimed at securing "proper development" as described above. In the context of the newly established Mandatory government and its desire to introduce law and order, the control of building operations was in itself an important objective. The geographical ambit of this control was determined by the declaration of "Town Planning Areas". From the date of constitution of such Areas, no person was allowed to carry out development operations, as defined in the Ordinance, in relation to streets, buildings and other structures unless a planning permit was first obtained from the local commission [110]. This did not apply to development by central government [111]. The Ordinance proceeded to state that from the date at which a scheme first came into force no permission "shall be granted by the local commission ... unless the work contemplated fulfills the requirements of the scheme" [112].

Consequently, from the date of the declaration until the introduction of a binding scheme, planning permission could be granted subject only to rules and by-laws in force, since no provision was made for interim development [113].

Once the scheme became binding, development control was to be used in accordance with the scheme to secure its implementation. This

meant the licencing and enforcement powers which were operated by the local commission. The obligation to adhere to provisions of the scheme as required by the Ordinance limited the discretion of the authorities in dealing with planning applications.

The term "building operations" covered the layout and construction, as well as an attempt at such, in relation to streets and it included the erection, demolition, reconstruction, alteration, addition or structural repair of buildings [114]. Development control did not, however, cover the use to which land and buildings were put.

A refusal of planning permission could be appealed to the central commission [115]. Apart from its appellate role, the central commission could also deal with planning applications at first instance if two members of the local commission so required [116]. In both cases the central commission had the final word [117] except, of course, in cases where the courts exercised their review powers.

Law enforcement was another aspect of the local commissions' duties. They were empowered to carry out the necessary work such as removal, alteration or demolition of any building in order to make it comply with the provisions of the scheme [118]. They could also execute any work which was the duty of a private individual when a delay in the execution of the word "would prejudice the efficient operation of the scheme" [119].

Characteristic to the Mandatory regime, the enforcement of the law was secured by regarding any contravention of the scheme's provisions as a criminal offence. On conviction, a fine could be imposed, in addition to the mandatory demolition of the unauthorised structure [120].

On the whole the control powers of the Mandate were much more extensive than those allowed by English legislation. The 1909 and 1919 Acts, apart from requiring that work should be in compliance with the scheme's provisions, did not set up any machinery for the sanctioning of building operations via a permit system.

Nonetheless, development control under the system in Palestine was not at that time an exceptionally stringent measure. It did not make any dramatic changes in the legal position, since building permits had also been required under Ottoman Rule. It fulfilled the functions which were regulated in Britain under Public Health legislation and building by-laws; namely the imposition of elementary building standards. In addition, it was applied only gradually with the declaration of Town Planning Areas. It did, however, give the authorities the feeling that they had the power to create rather than merely regulate existing property rights. This last point is elaborated further in the following paragraph.

5. Rights of the Individual Landowner and Public Participation
Under the 1921 Ordinance

As described above, the effects of statutory planning on the rights of the individual landowner in relation to his property could be dramatic. It could lead to the expropriation of land without compensation [121], or could at least make considerable changes in existing property rights or delimit development rights previously undefined. It could impose restrictions on land use and subject the land to development control by means of a licencing process and criminal sanctions. It could also impose taxes and certain infrastructure payments. Planning powers allowed the government to make fundamental changes in property rights of individuals and consequently alter the balance between private and public interests. Yet the actual involvement of individuals whose rights could be affected by such measures was kept to a minimum.

At the scheme preparation stage, individual involvement was limited to airing objections to a draft scheme already prepared by the authorities. The fact that the right to object was accorded not only to landowners but to "any persons interested as owner or otherwise in land affected by the schemes" [122] did not compensate for the fact that these objections were heard at a rather late stage in the scheme's preparation. The consideration of these objections and the final decision was in the hands of the central government

which had actually prepared the scheme. In effect, the provision for objections merely allowed interested persons to let off steam without giving them any substantial powers in the decision making process.

Financial matters resulting from the scheme's provisions (namely compensation for expropriation and planning blight, payment of betterment tax, etc.) were open to negotiation between the authorities and the individual, subject to the provisions of the Ordinance. When disputes regarding these financial aspects of planning arose the only right of the individual was to demand arbitration. The arbitrator was at the time appointed by the authorities [123].

The requirement to seek planning permission before carrying out any development vested the power of such decisions totally in the hands of the authorities. The only right preserved to the interested party was to appeal to a higher body within the planning administration [124].

In comparison with the then English system, the Mandatory Ordinance showed a marked bias towards the administration. The English law emphasised the need to take account of the private interests concerned, as illustrated by sec. 56(2) of the 1919 Act which stated:

"Provisions shall be made by those regulations: (a) for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the regulations;"

The regulations [125] prepared under this Act included no less than six separate occasions when an owner could state his case. Moreover, there were eight separate occasions when notices of a scheme had to be published with days or weeks to elapse after each publication [126]. The safeguarding of private rights proved to be so lengthy and cumbersome a process that Ashworth commented: "the result was a labyrinthine procedure in which any scheme might well be lost for ever and which was likely to make town planning appear to all but the most enthusiastic a task involving efforts much more than commensurated with the advantages which it might procure" [127]. Some of these safeguards were revoked by the 1919 Act in order to simplify the process of plan preparation. Nevertheless, the "co-operation principle" and securing of property rights remained, at least in theory, as fundamental as before.

The Mandatory Ordinance on the other hand, although it did not ignore existing property rights [128], emphasised the superiority of the public good as determined by the central government. The individual had a much less influential role in the process of statutory planning.

In view of the discretion given to the central commission in the preparation of statutory schemes where and when it wished, the omission of a provision giving the public an opportunity to demand the preparation, adoption or modification of such schemes was striking. Under English law [129] the public could submit representations and participate in public local inquiries when it

wanted the Minister to order the responsible authority to prepare a scheme, adopt a scheme proposed by owners or modify an existing scheme. Such rights of the public were in opposition to the attitude of the Mandatory government. It could not allow such rights against an agent of the central government (the central commission) and the English provision was not adopted.

It is only fair to point out that as a whole this Ordinance was far from being another "Turkish despotism". On the other hand, it did not reflect the English legislation's concern with private interests.

B. STATUTORY PLANNING IN ACTION DURING THE FIRST STAGE

The first stage of formal statutory planning in Palestine began with the coming into force of the 1921 Ordinance and lasted until the reforms introduced by the 1936 Ordinance. The 1921 Ordinance was set into operation immediately after its enactment. The central commission was constituted and held its first meeting only two days after the law had been published [130]. The commission was composed of senior British officials, including the Civil Secretary (as chairman), the Treasurer, the Attorney General, the Director of Public Works, the Director of Public Health and the Civic Advisor, Ashbee. It also included two local leaders representing the Arab and Jewish communities [131]. In later years the chairmanship of the commission passed to the Attorney General, who held it for no less than seven years [132], and representatives of the Survey and the Antiquities Departments also became members [133]. A British town planner, Clifford Holliday, who succeeded Ashbee as Civic Advisor in the Pro-Jerusalem Society in 1922, also served as a member and advisor to the commission on planning matters [134]. Apart from the central commission, no government institution was established for the carrying out of the technical aspect of plan preparation [135].

The most important planning authority in the country was thus ill-equipped in terms of technical personnel. Further, a lawyer and not an administrator or planner was its chairman in the early years. The reasons for this appointment, in our view, are related to the prevailing legalistic orientation of town planning systems. As

mentioned above, planning was first and foremost a means for ensuring law and order. Positive planning was considered by the government to be a minor part of the work of the commission. It was clear that for the tasks of formulating rules and by-laws, considering objections to schemes and supervising the imposition of this regulatory law, the appointment of a lawyer would be most appropriate.

At first planning activities were concentrated in the main cities. Jerusalem, Haifa, Jaffa and Nablus were declared Town Planning Areas [136]. Local commissions were constituted and statutory schemes were gradually prepared and approved. In the following years other Areas covering the main towns of Palestine were declared and by 1929 there were eleven Town Planning Areas [137]. Schemes were gradually prepared, largely as a result of local initiative, usually by the local commissions or individual landowners [138]. It became evident that the central commission which was formally in charge of scheme preparation could not prepare on its own the scheme for each local area. The commission thus concentrated on supervising and co-ordinating the planning activities of the various areas. It dealt with the proposed schemes and objections to such schemes and made recommendations to the High Commissioner who then made the final decision. The commission was also active in preparing procedural rules and model building by-laws [139]. In the period 1921-1929 it held fifty-five meetings, an average of 6 meetings a year. About fifty schemes for the main urban areas were approved.

During the years 1930-1936 the Central Commission, responding to the increase in urban population and development activity, was

considerably busier. It held 76 meetings and discussed 1313 items, of which 694 were related to statutory schemes (both outline and detailed), and the declaration or modification of Town Planning Areas [140]. Three new Town Planning Areas were declared during this period, making a total of 14 Areas by 1936 [141]. Many parts of the Areas were covered by detailed schemes and outline schemes were gradually prepared to provide an overall view of the future development of these Areas [142].

This is a remarkable achievement, especially when compared with the slow implementation of the counterpart legislation in England. The first planning laws in England were, from the aspect of plan preparation, a failure [143]. Under the English 1909 Act, only 13 schemes were formally submitted [144] out of an authorised 172 schemes, and only a few of these were actually implemented in the first ten years up to 1919. In order to promote the preparation of schemes, the 1919 Act laid a statutory duty to prepare schemes upon local authorities above a certain size. This Act was unsuccessful in effecting a real change in the preparation of schemes. In fact the deadline of 1926 for schemes to be submitted had to be extended [145] and little progress was made during the twenties. By 1928 there were in England 98 out of a total of 262 urban authorities which had not submitted any proposal, in spite of the duty laid down by the law [146]. More than twenty years after the first English planning law had been enacted only 38 schemes had been approved covering only 57,897 acres [147].

A short while after the 1921 Ordinance had been put into effect

it encountered criticism from various sections, including complaints that the system was complicated and unworkable. On these complaints Ashbee commented: "there is much of real truth in them. Laws and Ordinances that are suitable to western cities, and partly because of the way in which their citizens observe and administer them, may not be suitable to eastern cities or it may be a very long time before they are" [148]. Was this a cynical-colonial attitude or a genuine criticism of a maladjusted system?

1. Town Planning (Amendment) Ordinances 1922 [149]

The first amendment to the 1921 Ordinance related to four articles and dealt with the machinery of planning, the recovery of the betterment tax, and the enforcement of the law.

The first provision stated that the president of the municipality should serve as chairman of the local commission in the absence of the District Governor [150] or his deputy.

Although the status of the municipalities was raised by this provision, putting the local elected member of this commission in third place in the hierarchy of the commission, before other British officials, it was in fact a minor change applicable only in special circumstances.

The second provision enabled the local commission to delegate its powers of granting planning permission to a sub-committee of three of its members [151]. It also elaborated the powers of the

commission to impose such conditions and limitations as it thought fit on the granting of permits [152]. This could make development control more efficient.

The third provision dealt with the recovery of the betterment tax. It was aimed at overcoming the difficulties in implementing the existing law by providing that the money be paid to the municipalities in four annual installments. It also provided for the setting off of payments of this tax against compensation for expropriation.

The fourth provision was related to the enforcement of jurisdiction over offences under the law. It vested jurisdiction over offences under the Town Planning Ordinance in line with the reorganisation of the courts which took place after the 1921 Ordinance had been passed.

2. Town Planning (Amendment) Ordinance 1929 [153]

After five years the Town Planning Ordinance of 1921 was again subject to examination; some further amendments were considered [154] and in 1929 an amending law was introduced.

Compared with the first amendment, this Ordinance made more fundamental changes in the principal law. Yet it still related to planning techniques rather than to principles. It marked the acceptance of some practices which had been developed in the previous years of implementation of the law. The main innovations were: (1)

decentralisation of scheme-preparation; (2) revision of statutory schemes and the establishment of two new types of scheme - outline and detailed - which replaced the single scheme of earlier legislation; (3) making obligatory the preparation of an outline scheme; (4) introduction of interim development provisions; (5) changing some provisions for expropriation.

a. The Local Institutions and the Planning Machinery

The changes introduced by these amending laws may appear trivial; however they conceal a fundamental debate on the relationship between the Mandatory central government and the local institutions. From the outset, both the Jewish and Arab local communities had demanded participation in the government of the country. Though the British wished to keep to themselves the main governmental powers, they realised that co-operation with the local institutions was crucial for effective government in Palestine. The colonial method of indirect rule was thus employed in many spheres of administration, including municipal affairs and town planning.

The history behind these amending laws greatly helps in the understanding of the changes they made in the statutory planning system, and it is worth describing in brief the events leading up to these laws.

Most of the complaints against the principal law were directed towards the cumbersome process of dealing with planning applications and the domination of central government over the planning process.

In a meeting held in 1922 between government officials and the mayors of the main cities, the latter raised these issues, particularly pressing for more involvement of local authorities in the planning process [155].

As a result of this meeting a Town Planning (Amendment) Ordinance was drafted [156]. The draft included, inter alia, a provision allowing planning applications to be dealt with by a sub-committee of a local commission, chaired by the president of the municipality. This suggestion was opposed by some British officials when it was discussed by the Advisory Council [157]. The Assistant Governor of Jerusalem, H.C. Luke, had this to say: "The town planning commission acted as a sort of aesthetic court of appeal against the Mayor and members of the municipality, especially in districts like Jerusalem where there were a number of zones and where for archaeological, aesthetical and other reasons considerable experience was necessary if building permits were to be granted" [158].

This illustrates a common paternalistic attitude amongst British officials who felt that the local people were not capable of making what they regarded as proper decisions on planning matters. On the other hand, British officials at that discussion stressed the importance of maintaining close collaboration in the planning process between the local commissions and the municipalities [159]. It was understood that the local institutions were essential for the implementation of the decisions made by the planning institutions. This twofold attitude reflected the British colonial method of indirect rule [160].

As mentioned, the proposal to appoint local mayors as chairmen of sub-committees for building permits was not made obligatory. The creation of such bodies and the power to make these appointments were made possible, but were left to the discretion of each British District Governor in his capacity as chairman of the local planning commission. Nevertheless, the tendency to increase the powers of local authorities was developed in the 1929 Ordinance and subsequent legislation, yet never at the expense of control by the British officials.

The 1929 Ordinance provided a new division of tasks between the tiers of planning institutions. Since the burden of preparing local schemes for the entire country had been too much for the central commission, schemes were prepared and submitted by local commissions, or even the landowners themselves. This practice was regularised under the 1929 Ordinance which gave formal recognition to the changed relationship between the central and local commissions.

As a result of the 1929 amending law, the local planning commissions, and in turn the local institutions, improved their status within the planning machinery. Their functions were extended to include the initiation and preparation of statutory schemes and they became the first bodies to deal with draft schemes prepared by private landowners.

However, the central commission retained its functions of supervising and co-ordinating schemes inter se. This ensured conformity of schemes with central government policies. Final control over statutory schemes remained with the High Commissioner himself as the highest planning authority, though he normally acted on the recommendation of the central commission.

It is worth stressing the fact that although the 1929 (Amendment) Ordinance introduced a functional reform of the existing planning machinery, a more comprehensive reform of the composition and organisation of the planning institutions had to wait for the consideration of the structure of local government as a whole.

b. Two Categories of Statutory Schemes

The second change introduced by the 1929 Ordinance related to the form of statutory schemes. The 1929 Ordinance adopted the practice which had been developed in Jerusalem some years earlier. Two categories of schemes were introduced, outline and detailed, making planning techniques in Palestine more sophisticated. The two types of schemes formed a two-tier structure. The outline scheme formed the higher tier and was aimed at providing a general framework for the development of an entire town; the detailed scheme formed the lower tier and filled in a number of particulars relating to the plots included in it. However, many questions regarding the relationship between the two schemes had no explicit explanation in the 1929 Ordinance. It was not clear which scheme prevailed if there

was conflict between them; nor was it certain to which scheme the law referred in the articles of the principal Ordinance of 1921. Apart from this structural change, the format of the new schemes was not changed and remained map-based with a written report and a proposal for new bye-laws when required.

As for the content of the schemes, the 1929 Ordinance did not make any radical changes. It mainly rearranged the list of subject matters of the 1921 Ordinance into two groups, one for each new type of scheme. The outline scheme included matters of some degree of generality, while the detailed scheme included more specific issues which elaborated on the general provisions of the outline scheme.

One result of this reorganisation was additional emphasis on the physical land use aspect of town planning and a weakening in the tendency to include social considerations in planning. In addition, while the financial and managerial aspects of planning implementation remained within the scope of the new schemes, they were also weakened by the extended part given to, and stronger emphasis placed on, regulatory planning. The new schemes were made more rigid than the single scheme under the original law through the omission of a catch all clause, which allowed the inclusion of matters other than those listed in the Ordinance.

In prescribing the content and form of the new schemes, the Mandatory legislator was influenced by the English Town Planning Act 1925 and the then Town Planning Regulations in force.

A. The Outline Scheme: This seems to have been designed to cover the whole territory of each Town Planning Area. Its preparation was made obligatory and had to be carried out by each local commission. This duty was imposed in line with a similar obligation existing under the English law. In Palestine, however, the duty applied to any town, large or small, which was declared a Town Planning Area and covered built up as well as undeveloped land. Another difference was that in Palestine no time limit was imposed for the submission of such schemes, but within a period prescribed by the central commission [161].

The Amendment Ordinance, although it did not include any definition of outline schemes, stated the purposes and the matters to be dealt with by such schemes. The prescribed objectives were based on those mentioned for a town planning scheme under the English law. Its provisions for schemes were to be directed towards "securing proper conditions of health sanitation and communication and amenity and convenience in connection with the laying out and use of the land". This again strongly emphasised physical land use planning.

The content of the outline scheme was to include zoning as a prime method of regulating land use, infrastructure such as roads, drainage and water supply and general rules as to the erection of new buildings. These matters were to be dealt with broadly from the point of view of the entire area, as the word outline suggested. The content of this scheme resembled an English "preliminary statement" of the proposed scheme which had to be submitted under the English

Regulations. The difference was that while in England the outlines of the scheme were submitted to the Minister prior to the submission of the full draft scheme, in Palestine the outlines themselves were made the subject of a separate scheme in the new two tier structure.

B. The Detailed Scheme This aimed at dealing with small areas at some depth. As it covered only part of each Town Planning Area, it is appropriate to talk of several detailed schemes and one outline scheme relating to each Town Planning Area [160]. The preparation of a detailed scheme was usually made at the local commission's discretion [161], although the central commission had the power to require the preparation of such schemes in certain circumstances [162]. A particular power was adopted from the English law, which was to require the preparation of a scheme for the preservation of any area or building with a special archaeological interest or natural beauty [163].

The content of a detailed scheme was based on the full list of matters which first appeared in the 1921 Ordinance and on matters which appeared in the English law. All the matters which were subject to an outline scheme had to be dealt with in a detailed scheme [164]. It could also deal solely with particulars such as the rearrangement of building plots of land, the use of plot including the assignment of land for public purposes, the allocation of powers, and some financial resources for the implementation of the scheme. It could also deal with aesthetic control of building design and provide for the conservation of areas, buildings or trees of special interest. In addition, the detailed scheme could include provisions as to

abolition and reconstruction of overcrowded and congested areas [165].

c. Interim Development Provisions

This was the third change made in planning law by the 1929 Ordinance. The introduction of provisions empowering the central commission to regulate interim development was of considerable importance. Although such provisions existed in English legislation since 1919 [166], in Palestine they were not introduced until the reform of 1929 [167]. Under earlier Ordinances, development activities during the preparation of a statutory scheme could proceed without restriction, save for the need to obtain a planning permit. It is doubtful whether the authorities had any power to prevent development from taking place, even if it were prejudicial to a proposed scheme, so long as it fulfilled the requirements of the existing by-laws and rules.

The innovation of the 1929 Ordinance was that the central commission could prescribe conditions and restrictions regarding the granting of a permit for development within an area affected by a proposed scheme. After a proposed scheme was deposited, the general rule was that no planning permit would be granted unless the central commission so authorised. The wording of these provisions emphasised the negative aspect of control of development in the interim period of plan preparation. In England the corresponding provision had more positive implications in which the permission to carry out interim development work was aimed primarily at ensuring the entitlement of

the developer to compensation if the scheme, as finally approved, conflicted with this development [168].

Under both the English and Palestinian laws, interim development provisions which conferred more discretion on the authorities produced, on the one hand, a more flexible system, but on the other it gradually created a greater dependency on the bureaucratic machinery. This was particularly true in Palestine where a licencing system was applied to control development activities [169]. The interim development provisions enabled the officials to exercise even greater control over development at the various stages of plan preparation.

d. Rearrangement of Expropriation Provisions

The 1929 Amending Ordinance unified the procedures for the expropriation of land under planning law with provision regarding the expropriation of land for public purposes [170].

This substantial provision which was added to the final draft of the 1929 Ordinance [171] prescribed the proportion of land which could be expropriated without compensation for the construction of public roads as one quarter of one plot. This changed the provision of the 1921 Ordinance which gave excessive power to take an undefined part of land for road construction. Obviously this provision was too wide and required limitation.

In a similar vein, the limitation in the 1929 Ordinance on the amount of compensation payable for expropriation of land was considered inequitable in view of the great increase in the value of urban land around the principal towns. It was therefore abolished [172].

These two changes marked a move towards a more liberal attitude in regard to the rights of the individual landowner whose land was required for public purposes. They replaced the Ottoman legacy which had dominated the approach to these matters in 1921. On the other hand, the new provision regarding expropriation of land without compensation remained a radical tool by any English or European standard. The 1929 Ordinance went even further and repealed the preconditions for the use of this power. It thus provided the authorities with a powerful tool for securing land for a road network. This was at the expense of private landowners and was due to the nature of the existing regime and the tradition of the previous rule that such powers could be exercised in Palestine.

C. THE DEVELOPMENT OF PALESTINE DURING THE FIRST STAGE

The enthusiastic implementation of planning law in Palestine was closely connected with the operation of the development market. With the exception of the strikes in 1921 and 1929, this was a period of relative political calm, enabling Palestine to undergo a degree of progressive development under the successive High Commissioners, Samuel and Plumer.

1. Development by the Government

The newly established civil administration gave priority to the essential activities of a state; namely, the maintenance of public security, the administration of justice and the establishment of sound finance. Other activities were in the areas of health, education, agriculture, trade and communications. The government rapidly completed several major development projects and signs of improvement could be seen in many aspects of life. The Department of Public Works constructed and repaired roads, railways, bridges and water pipes. Postal, telephone and telegraph services were established. The Department of Health made improvements in medical care, sanitation and drainage. Land registries were reopened and reorganised, enabling land transactions to take place [173].

However, physical and economic development was not an objective per se of the government. Development was the concern of the government mainly in so far as it advanced British interests and the

governing of the country. Imperial strategy [174], internal security and administrative convenience were the main considerations in carrying out development projects.

Thus, a strategic harbour in Haifa was planned, a transport junction in Lydda constructed and administrative centres established in Jerusalem, Beer Sheba, Gaza and Ramleh. Britain, as the Mandatory power, had been charged with a special duty regarding the development of the country. Article 2 of the Mandate stated [175]:

"The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish National Home, as laid down in the preamble and the development of self governing institutions and also for safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion".

Article 11 gave the Mandatory "full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein ..."

However the British government, on the advice of the Chancellor of the Exchequer, rejected the implementation of the Hope-Simpson Report [176] which recommended substantial British investment in the development of the land. For example, he estimated that 6-8 million pounds sterling would be needed for the settlement of 10,000 Arab and 20,000 Jewish families.

Despite the early improvements made, the administration of Palestine actually spent very little on physical development. Between 1930 and 1936 the central and local authorities spent 4 million pounds on buildings, roads, bridges and water supplies. This figure,

which includes the expenses of the military authorities, was less than one seventh of the sum invested by the private sector in development. The government did very little to alleviate the shortage of housing and the poor living conditions which were widespread throughout the congested cities, particularly among the Arabs. Public buildings such as schools, hospitals and government buildings were inadequate throughout the country. Even government offices were housed in rented buildings which had been constructed for other purposes. An exception were the new buildings for police stations. As one study commented: "The contrast between the numerous and spacious modern police stations and the lack of facilities for other and more constructive purposes reflects the primary interest of the Government" [178.

The most that can be said of the administration's policy of that time is that it usually permitted local Zionists and particularly the Jewish organisations to carry out development activities, though it did not stimulate nor encourage them. This passivity was due both to a policy of laissez-faire resulting from a lack of financial resources and even more to uneasiness or opposition to the idea of a Jewish State. Many influential officials in Palestine came to believe that in circumstances of strong Arab hostility, the implementation of the Balfour Declaration would be a dangerous and costly mistake. However they could not ignore the fact that the British presence in Palestine was strongly linked to its obligation to the development of a Jewish National Home. Their

attitude was ambiguous enough, therefore, that at most it could cause a delay in the development of the country to postpone the establishment of a Jewish State, but could not prevent the Jews themselves from developing Palestine towards the realisation of their ideal [179].

One of the most striking instances of the lack of government help in physical development related to the provision of a most vital ingredient: land. As successor to the Ottoman regime, the government of Palestine administered all State land, which consisted of most of the land of Palestine. However, almost no land was offered for sale or otherwise made available for local development. Political considerations dominated this policy, since the pressure for development came mainly from the Jewish sector. State land was largely left undeveloped and this position of the government remained unchanged throughout its rule in Palestine, causing great hardship, particularly with the resulting lack of housing.

Local investment was insufficient to cope with the growing demand for building for various purposes, particularly residential housing. This resulted both in a sharp rise in land prices, construction costs and rents, especially in the main cities, and also in overcrowding and poor quality housing.

The rapid development of new neighbourhoods, often without any proper planning, led to further problems of overcrowding and slum areas. Even sections of Tel Aviv which were only 15 to 20 years old were found to have inadequate housing facilities. This was due to

poor planning, lack of control and poor construction. In the older cities and towns the problems of old housing, narrow streets and poor sanitation were even worse, particularly in the Arab sectors. Rural areas were less congested than the cities but their conditions were often worse. Jewish villages were generally of better condition than Arab villages, partly because they were newer and used modern architecture and techniques. In general, however, housing fell far below Western European standards.

Speculation in land had been rife and urban land prices rose sharply during the building boom of the early 1930's. In many cases the speculative buying up of land resulted in land costs accounting for 30 percent of total investment cost, compared with the then 10 to 20 percent in Europe. The increase in land cost also led to raising of rents and created pressure for maximum exploitation of land, leaving little or nothing for public utilities, parks and other open spaces. Scarcity of capital meant little was invested in unproductive construction, which in turn led to inadequate housing and availability of urban areas in general.

This housing problem was neglected by the government and left to local private initiative and Jewish public bodies. These latter bodies acquired land mainly around the main cities and provided for the plans, expenditures and construction of buildings, roads and water supplies. Sometimes the settlers were organised into co-operative societies, given freehold of their properties or long leasehold rights. However these initiatives by the Jewish Agency and other bodies were limited, did not provide low cost urban housing for

low income workers, and therefore did not solve their housing problems. In addition, they were restricted to certain areas and could not solve the problem of the country as a whole [180]. Nonetheless, the location of the public housing had a long term significance on the spatial distribution of the Jewish population in Palestine and subsequently in Israel [181].

2. Development by the Local Population

The development of Palestine at this stage was marked by the continuation of differing trends by Arabs and Jews and the establishment of completely separate Arab and Jewish societies, isolated from one another.

The major Arab national institution was the Supreme Islamic Council, whose authority was derived from its responsibility towards the management of the Waquff land. The major Jewish authority was the Zionist Organisation, which was recognised under the terms of the Mandate as a Jewish representative institution [182]. This institution was the main force behind the rapid physical development.

During this time, the composition of the country's population was gradually changed. By the end of 1929 the Jewish population had grown to about 160,000, twice that of the pre-War population [183]. Its percentage of the total population grew from 9.5 in 1919 to 16.5 in 1929. This resulted in increasing purchase of land by Jewish

public bodies. The number of Jewish agricultural settlements more than doubled to 110 and in 1931 their population tripled to 38,000 [184], while new urban areas sprang up with the influx of middle class immigrants from Eastern Europe.

During the period 1917-1929, Jewish capital amounting to 40 million pounds sterling flowed into Palestine [185]. Some industries were established and modern agricultural methods introduced. Another direct result of the influx of immigrants was the dramatic increase in demand for housing, and the building industry became the most important factor in the economy of Palestine. In 1925, 43 percent (7,800) of all Jewish workmen were employed in the building industry. From 1924-1931 local communities invested 11,500,000 pounds sterling in the building industry. In fact it was this industry which prevented a major crisis of unemployment during the 1926-1928 depression [186].

In 1929 the disturbances in Palestine led to new restrictions on Jewish immigration [187]. The new British policy gave permits to immigrants according to the country's capacity to absorb them. Such a vague yardstick naturally gave rise to conflicting opinions and led to controversy between the administration and the Jewish community. In 1931 these restrictions were lifted due to worldwide pressure on Britain. The beginning of the thirties marked a resurgence of Jewish immigration and development. Under the shadow of Nazism, an unprecedented influx of immigrants from Germany and Central Europe entered Palestine between 1933 and 1936. These immigrants numbered 164,000, mostly middle class [188]. They came from urban centres,

were self-supporting and brought into the country the sum of 31,570,000 pounds sterling. This volume of immigration and new capital opened further opportunities for physical and economic development and contributed to the general strength of the Jewish community. Industry, commerce, agriculture and transportation facilities were developed further. Again the building industry governed by the private sector took the largest share of the total economic activity. The boom in private building occurred from 1933 to 1935 and reached its peak in 1935, the year of the largest immigration. Jewish investment in the public and private sectors of building was over 30 million pounds sterling between 1930-1936. During that same period, investment by the government, municipalities and army was no more than 4 million pounds sterling on buildings, roads and water supplies [189].

The years of the first stage saw the emergence of ideological differences within the Jewish sector in Palestine. Though most Jewish activities in physical and economic development, land purchase and land settlement were centralised under Zionist organisations, the Jewish private sector grew steadily in these years, directing its resources mainly towards urban development, commerce and light industry. There was a growing tendency within the Jewish national institutions to favour the ideologies of ruralism and collectivism over urbanism and private initiative. The growing political power of the Socialist-Zionist parties within the movement did not affect the decision of most Jewish immigrants to live in urban rather than rural

areas. It did, however, strongly affect actual development of rural and urban settlements. The implications of this internal ideological-political conflict to the evolution of town and country planning in Palestine is further elaborated below.

Major urban projects were implemented during this period, many of them planned by the architect and town planner Richard Kaufmann. Kaufmann, a German Jew, was invited as early as 1920 by the Zionist institutions to prepare plans for new settlements, in order to avoid a repetition of the mistakes made in the building of the pre-War Jewish settlements [190]. Kaufmann prepared three types of plans in the 1920's: urban, rural and regional [191]. His plans for urban settlements were submitted to the planning authorities and after being approved were implemented in Jerusalem, Haifa and Tiberias.

Kaufmann's plans for the development of three Jewish garden suburbs in different parts of Jerusalem influenced the method adopted by the local commission for the statutory planning of the entire city. It led to the sectional planning of Jerusalem. The city was divided into eight sections each of different functions. Plans were gradually prepared for some of these sections with the view that these plans would form one comprehensive statutory scheme. At the same time, Ashbee's outline zoning scheme of 1922 and Holliday's 1930 scheme were prepared and used as a guideline for all decisions relating to development control [192]. This practice of outline and detailed planning, as seen above, was enshrined in the 1929 legislation and became standard for the country as a whole [193].

It is noteworthy that in those sections of Jerusalem where planning and building operations were centrally organised, development control was far more effective than in areas where development was carried out on an individual basis. In the organised neighbourhoods, restrictive covenants were also imposed upon the landowners and developers, thus ensuring their conformity to the approved plan. In practice, local committees had effective control over development, in addition to the statutory bodies [194].

Richard Kaufmann also had the unique opportunity of planning an entire new town called Afula in the Jezreel Valley. This town was planned as an intermediate urban center surrounded by rural settlements [195]. The difficulty of forecasting changes in socio-economic conditions became evident in the planning of this town. Much necessary information was either unavailable or unpredictable. In the event this town turned out to be a failure. It did not serve its purpose, mainly due to the anti-urban attitudes of the surrounding population which led them to ignore the town and deal directly with the major urban centres. Afula could not therefore progress beyond the level of a small settlement [196].

Afula is an example of planning that could not be completed. Tel Aviv is an excellent example of development without coherent planning.

In the 1920's Tel Aviv grew rapidly from a suburb of Jaffa into a town of over 40,000 inhabitants [197]. This growth was due to the initiative of middle class private investors. However, because of the growing antagonism towards urbanism and private initiative, Tel Aviv's planning and development was, from the outset, neglected by the Jewish institutions and unco-ordinated development was a major factor in the town's chaotic expansion. In the words of Kaufmann in 1926, Tel Aviv was "defying all effort to make it conform to a systematic scheme" [198]. The huge demand for dwellings and other types of buildings also made it impossible for the planning authorities to control or direct development.

In 1925 Patrick Geddes made a working trip to Palestine and was invited by the Zionists to prepare a development plan for Tel Aviv. He was instructed to plan a town of 100,000 inhabitants, with its own port, which would also provide the amenities of a garden suburb [199]. Though Geddes' plan only covered part of the town, it was submitted to the statutory bodies and approved in 1927 [200]. After the 1927 scheme, Tel Aviv continued its anarchic development despite the existence of a statutory scheme. Ironically, Geddes' scheme is still in force today.

In addition to Tel Aviv itself, other towns in its neighbourhood and the old villages (Moshavot) on the coastal plain also developed rapidly during this period, and a second new urban centre grew in Haifa and the Haifa Bay.

Jewish settlement in Palestine had begun to show a tendency to concentrate on the central-coastal plain. This may be said to reflect on an old rooted tendency to cluster together for security and convenience. This tendency continued at an accelerated scale during the new few years and ultimately posed a major planning problem. It also acted against the Zionist goal of a balanced development of the country as a whole.

Despite the new type of outline scheme, urban planning in practice lacked the overall view of the whole town. Schemes expressed the basic technicalities such as zoning, communications, open spaces, etc., but did not integrate them into one coherent system of town life. Planning also lacked the vision of the country as a whole and no attempt was made to ensure a proper distribution of population and sources of employment [201].

In England at the same time the conception of planning as a wider activity than the design of garden suburbs was recognised by the Town and Country Planning Act 1932 [202]. This Act extended its scope to include built-up as well as undeveloped areas, though in actual practice this aspect did not differ significantly from that in Palestine.

a. Rural Planning and Development

Rural settlement in Palestine was the core of the development activities of the Zionist organisations, both for ideological and economic reasons. The purchase of large areas in the Jezreel Valley provided new opportunities for rural settlements. This land required reclamation, including drainage of malarial swamps and the provision of water supplies. To achieve this, a development project encompassing 39 settlements was carried out in 1921-1927. A similar project entailing the draining of swamps on the coastal plain between Haifa and Tel Aviv led to the establishment of 58 new settlements between 1926 and 1936 [203]. Jewish rural settlements were both economic and social experiments [204]. They were of three types: collective, co-operative and private. In planning the layout of these settlements, Kaufmann had to take into account ideological, sociological, economic and security factors, as well as the physical-geographical conditions. This led to many different forms of schemes for various settlements.

The first settlements had been established on every available and suitable piece of land. These settlements were, in general, in remote uninhabited and undeveloped rural areas. Since the early 1930's, several villages were established on the coastal plain south of Tel Aviv, in the Hefer plain and the Sharon region [205]. During these years land purchase and rural settlement were motivated more by

considerations of security and convenience than urban settlement. The main objective in organised rural settlement was to concentrate the population around existing areas of Jewish settlement, rather than extend the area of settlement, as was the previous goal [206].

However, notwithstanding the planning of individual settlements, the development activities of the Zionist organisations as a whole were not the result of a coherent, national or even regional planning.

Statutory Control Over New Settlements: Although the new Jewish settlements were outside the declared Town Planning Areas and thus not covered by the 1921 Ordinance, they were nevertheless under statutory development control. For this very purpose the Mandatory government revised an old Ottoman law of 1858 (as amended in 1913) [207]. This law forbade the erection of a new village or quarter without first obtaining a special imperial decree from the Turkish authorities. A notice which was published in 1924 by the government provided that on the basis of the Ottoman law:

"Any person or corporation desiring to establish a new village or quarter outside a town planning area shall first make application to the British Commission; and submit plans which shall indicate the site of the village or quarter, the position of the roads which it is proposed to construct and any system of drainage or water supply which it is proposed to introduce. No permanent building and no construction of roads shall be begun till the approval of the District Commissioner has been communicated" [193].

This was another form of country planning through the restrictive measure of control exercised by the District Administration. The discretion given to the commissioner was wider than normally given under the Town Planning Ordinance, though it was exercised only in areas not covered by this Ordinance. With the increase in the number of declared Town Planning Areas, the importance of this legal instrument was reduced until it finally disappeared. Nonetheless it signified the intention of the administration to exercise broad control over development operations of all types. This control sometimes became an end in itself and apart from checking the activities of the inhabitants, it did not provide for any positive planning.

b. Regional Planning

The possibilities for regional development by the Zionist organisations were naturally very limited during the years concerned. Such operations required first possession or control over large stretches of land, and administrative and legal powers to make development effective. The Zionists lacked all of these. Despite this, a rather rudimentary form of regional planning took place in the Bay of Haifa, made possible in 1925 with the accumulation of 25,000 acres of land [209].

A drainage scheme was necessary to provide a base for human settlements and a large scale scheme was prepared by Kaufmann which provided for several settlements, linked together into a functional

region. This plan was rejected by the central planning commission, since the government had its own plans for that area. In order to exert pressure on the government, the Zionist organisation invited Patrick Abercrombie to prepare a plan for the area, which was ultimately accepted. This plan provided the basis for the development of the Haifa Bay, which included 19 new settlements in the region.

c. Physical Development in the Arab Sector

Almost no initiative for urban or rural development was made by the Arab community, which was generally hostile to Jewish activities, seeing in them an unwanted progression to the creation of a Jewish State. However, as private individuals, many Arabs took advantage of the new opportunities opened up by Jewish development. They created new villages in the developed coastal plain and while the landowning class benefited from the increase in value of their land, the masses enjoyed improved employment opportunities and increased sales with the development of markets for their agricultural products. The Arab urban population grew even more rapidly than the rural population, due to the rise in wages and facilities, and some industrialisation was introduced into the Arab towns. Between 1931 and 1937, approximately 500 new Arab enterprises were registered [210].

Nonetheless, the disparity in the physical and economic development of the Arab and Jewish sectors added to the already high tension and fueled the fires of nationalism. The growth in the Arab

population from about 600,000 in 1920 to about 900,000 in 1936 increased their socio-economic problems and led to a deterioration in their physical environment.

Arab opposition to Zionist activities grew through the years, culminating in the bloody riots of 1929. The disturbances began in Jerusalem in 1928, where conflicting religious rights over the Western (Wailing) Wall served as a background to deeper emotional feelings against the Jewish community. Nearly two hundred Arabs and Jews were killed and four hundred injured in the 1929 riots.

The investigations into the causes of these riots resulted in disagreement between the League of Nations and the British administration as to the responsibility of the Mandatory for these events [211]. The Mandate's Commission of the League of Nations contended, among other things, that Arab discontent was due to insufficient attention to the social and economic adaptation of this population to the new conditions created by Jewish activities. They also charged the administration with neglecting agricultural and other developments in the Arab sector.

Britain replied by stating its general policy, which was that the territories under her control must be emancipated as soon as possible from dependence upon grants-in-aid from the British Exchequer, and they must be developed on a self-supporting basis if they were to progress on sound economic lines.

This statement of policy clarifies much about the British attitude to planning and development in Palestine, as described previously.

The government could have alleviated the problems of the Arab sector by direct positive investment in proper planning, rehousing, sanitation, recreation, etc. This was rejected because of the cost. The other method of control was to impose restrictions on the Jewish sector, which began after the 1929 riots and was expressed in the British Colonial Secretary's, Lord Passfield's, White Paper of 1930. Only after this policy was nullified did the major Jewish physical and economic development of the first half of the 1930's take place.

To sum up, this phase laid firm statutory foundations for town planning in Palestine. However, the prevailing British policy led to minimum involvement in positive planning and development. A great deal of investment and determination were required to make planning a positive tool for promoting material development and welfare, which could not be provided solely by local resources. The government was both reluctant to commit British resources for the development of a territory for which self-government was envisaged in the long term, while the economic depression in Britain which began at the end of the 1920's definitely ruled out British development projects in Palestine other than for vital strategic interests or mandatory administration.

In its political role, town planning remained largely a tool for governing Palestine and less an organised development process. It served to ensure law and order in the area of physical development, particularly in times of political turmoil and inter-communal clashes.

For some time statutory planning was used as an instrument in a general policy of slowing down the pace of development. In line with other measures such as restriction of Jewish immigration and land purchase, control of development in urban and rural areas was tightened up to serve the overall aims of British policy.

The change in this policy came in 1931. It allowed Jewish economic and physical development activity since it was felt that economic prosperity, benefiting both the Arab and Jewish communities, might help ease political tensions. The rapid development which resulted from this new policy made considerable changes in the physical and economic structure of urban and rural areas in Palestine.

Socio-economic progress was part of the statutory planning system, though local initiative was considered crucial for its realisation. The challenge was taken up mainly by the Jewish sector and progress was aided by the use of both official statutory schemes and non-statutory plans and programmes.

CHAPTER 5. THE SECOND STAGE OF STATUTORY PLANNING: 1936-1948

A. TOWN PLANNING ORDINANCE 1936 [1]

The 1936 Ordinance marked the beginning of the second stage of the evolution of statutory planning in Palestine. This Ordinance repealed the former Ordinances dealing with town planning and reenacted the law in a consolidated form with some important changes. This Ordinance remained the principal planning law for nearly thirty years until the Israeli Planning and Building Law 5725-1965.

The most important innovations of the 1936 Ordinance were in the reorganisation of planning administration. The new structure of the planning machinery was divided into three tiers, as follows:

- I. The High Commissioner for Palestine
:
V
- II. District Town Planning and Building Commissions
:
V
- III. Local Town Planning and Building Commissions

With the above structure the Ordinance followed the tendencies of a) decentralisation of central government planning institutions, and b) transfer of responsibilities to local elected bodies.

1. Decentralisation of Planning Administration

The reorganisation of planning administration may be understood better in the context of the general functioning of the Government of Palestine. The Peel Report of 1937 [2] which examined this functioning heard evidence of a trend towards departmental government resulting in over-centralisation. The Report called for an improvement in the relationships between the Departments and the District Administrations. In this respect, the innovation of the 1936 Ordinance came at exactly the right time. It abolished the central commission and created Building and Town Planning Commissions in every administrative district [3]. The district commissions were invested with the powers and functions of the central commission in relation to their respective districts. They did not include representatives of the local population but consisted solely of British officials. The chairman of each commission was the District Commissioner and other members included a town planner and the representatives of the Legal, Health and Public Works Departments [4].

The main tasks of the district commissions were the regulation of planning and development activities through subordinate legislation, the consideration and determination of statutory schemes, the supervision of the functioning of the local commissions in relation to development control, and the enforcement of the law.

The High Commissioner remained the highest planning authority with overall responsibility for statutory schemes, subsidiary legislation and the general implementation of the law. As the High Commissioner could not personally exercise most of his control powers, he was helped by the Government Town Planning Advisor and other officials to whom he delegated his powers [5]. The High Commissioner remained the only centralised planning authority after the abolition of the central commission.

The tendency to decentralisation in planning was in sharp contrast with the existing departmental government. Planning was largely locally oriented, with almost no regional or national conceptions; hence the call for decentralised operation which had the advantage of having access to firsthand knowledge of the needs of the local area and its potential regarding planning matters.

While the dispersion of the main planning functions among the districts may appear to be a regression to a primitive type of government, in fact a rather sophisticated system was created. The district town planning commission was not identical with the district administration, but was a combination of the government departments with the district administration. These bodies could help ensure that local circumstances were taken into account in the application of national departmental policies. An additional step towards uniformity in the operation of the district commissions was the appointment of the government draftsman and town planning advisor to each of the three commissions [6].

The fact that no fundamental differences in planning policies of the various districts could be pointed out [7] shows that this new structure prevented the development of inconsistencies which could have followed the abolition of the Central Planning Commission.

2. Transfer of Responsibilities to the Local Elected Bodies

The 1936 Ordinance followed the tendency of local participation in the planning process by transferring responsibilities to the municipal councils. The Ordinance provided [9] that in a town planning area which included a municipal corporation [10], the local commission would be the municipal council. Thus the fourth tier of the old structure was amalgamated with the third (the local commission) [11]. In other areas where no municipality existed [12], the local commission consisted of seven members, of whom 2 were non-officials, appointed by the district commission [13].

The tasks of the local commissions remained unchanged. They were in charge of the preparation of schemes, the operation of development control, the implementation - in a limited form - of the schemes, and the enforcement of the law [14]. Since the tasks of considering and determining the proposed schemes were given to the district commissions, the local commissions' functions in this matter "would seem to be purely consultative or advisory ..." [15].

The transfer of responsibilities did mark a move away from paternalistic control over the local population, though it was limited by the fact that close supervision and control over these local bodies was secured by the law [16]. The main question was whether the local institutions had reached a stage where they could carry out the duties which they were entrusted by the law. It was clear that most Arab municipalities had many difficulties in providing municipal services, and even those municipalities including both Jews and Arabs, such as in Jerusalem and Haifa, had problems of finance and lack of professional staff. The situation was worse for Arab rural councils; hence the provision for the different composition of local commissions in rural areas. The legislator had anticipated problems in scheme preparation by local commissions by giving the district commissions default powers [17].

Thus despite the greater involvement of local institutions in the reorganised planning administration, statutory planning remained largely in the hands of the central government.

3. Structure and Content of Statutory Schemes

The innovations of the 1936 Ordinance concerning scheme preparation were of secondary importance, changes being more technical than substantial. The existing outline and detailed schemes were maintained, while the list of matters to be dealt with by each scheme was revised and enlarged in the light of experience acquired prior to 1936 [18]. The outline scheme, designed as a framework

including the most important issues, dealt with general matters of physical planning. The social and economic implications of town planning obviously required consideration, but the formation of explicit normative provisions seems to have been beyond the scope of the statutory scheme.

Under the reform of 1936, an outline scheme could deal with additional matters such as assignment of land for open spaces, nature reserves, airports and burial grounds [19]. Considering the type and form of such schemes as a map-based plan [20], these additional details increased the details of the outline scheme, obscuring the difference between outline and detailed schemes.

The content of the detailed scheme was also enlarged with the inclusion, among other things, of the allotment of land for recreation grounds, car parks, airports, slaughter houses and cemeteries [21]. The inclusion of these forms of land use indicated needs which had arisen as a result of the rapid development of the country [22].

A more significant innovation was the introduction of a parcellation scheme [23]. This was inferior to other types, and could be prepared only after the coming into force of either an outline or detailed scheme relating to the concerned area. The parcellation scheme was aimed at providing a means for the further subdivision of any individual plot of land. The separation of the issue of

subdivision from the more general matters of schemes was an attempt to make the procedure of consideration and approval of detailed schemes more efficient [24].

The preparation of a parcellation scheme was generally done at the discretion of the concerned landowner, although the local commission could require its preparation and even make it a condition for the granting of planning permission [25]. In spite of its limited scope, the parcellation scheme had to pass through a cumbersome procedure of deposit, publication, consideration of objections and the approval of the district commission [26]. Apart from being a burden on the individual applicant, this procedure added to the numerous duties of the district commission and reduced their ability to deal with more important planning issues. Nevertheless, the desire to ensure maximum government control prevented the delegation of such matters to the local commissions. This is another example of the colonial attitude which dominated many aspects of statutory planning in Palestine during the second stage.

4. Private Property Rights, the Public Interest and the Planning Administration

Some aspects of the 1936 Ordinance were more liberal towards the rights of the individual landowner than the first Ordinance of 1921, while others were not as concerned with these rights as was the English law of 1932 [27].

On the matter of land expropriation, the 1936 Ordinance limited the postponement of a completion of expropriation to a maximum of 2 years and the four percent ceiling of interest payable during a postponement was abolished [28].

On the other hand, the expropriation of land without compensation of up to one quarter of any plot was not only maintained but extended. This power enabled the authorities to expropriate land not only for public roads but also for recreational areas [29]. The authority could take immediate possession even without notifying the owners [30]. Although the law provided for ex gratia payments in cases of hardship, such payments were at the discretion of the High Commissioner if "having regard to all the circumstances of the case he shall think fit" [31]. This clearly shows the prevailing approach of the Ordinance in favouring the administration's views regarding the needs of the country at the expense of the private landowner, an approach which was in sharp contrast to what McAuslan described as the "ideology of private property rights" prevailing in the British planning legislation.

The Supreme Court of Palestine, which was dominated by British Justices, affirmed the supremacy of the Mandatory administration's considerations by adopting a line of non-interference with the executive's wide discretionary powers. However, the court - particularly when sitting as a High Court of Justice - did help control the executive and safeguard the rights of landowners. In C.A. 10/39 A.G. V Azari [32], the Court said: "Under any system of town

planning the liberty of the individual must to some extent be sacrificed for the benefit of the public and however much one may sympathise with the objects of town planning on the grounds of health and amenity, Courts must be careful to see that the safeguards which the legislature has imposed are observed".

Although the Court refrained from re-examining the planning aspects of a decision taken by a planning commission, it often interfered to keep the authorities within the terms of the law, especially in regard to discretionary powers. A striking example of this is H.C. 37/39 Keren Kayemet Leisrael Ltd. V District Town Planning Commission Jerusalem [33]. In this case the District Commission of Jerusalem approved a detailed scheme submitted by the petitioner, subject to a condition that the building which may be erected should be of stone facing and not otherwise. The petitioner claimed that the commission had no power to impose such condition since there was no law or by-law in force that stone-faced building is obligatory in that part of Jerusalem. The Court followed a principle which was laid down by the English Court of Appeal. It held that since the existing by-laws allowed concrete as well as stone to be used for external walls, the commission could not vary its own by-laws by an ad hoc decision in any particular case. The only way to make the use of stone compulsory, said the Court, was by amending the by-laws. Judge Copland ended his judgement by saying:

"I wish to make this quite clear - this Court is not concerned with the merits or demerits of any particular scheme. We are not town planning experts. A scheme may be a good one, or it may offend every aesthetic consideration, - that is no concern of this Court. But what we are concerned with is that public

bodies such as the District Commission should exercise very wide powers strictly in accordance with the law, and not merely in accordance with what they think is desirable, and that they do not exceed their legal powers." [34]

In the context of private property rights, the 1936 Ordinance introduced an interesting innovation, which was the power given to the district commissions to make rules "as to the regulation of the mutual rights and obligations of adjoining owners, lessees or occupiers of properties ... in respect of the making, repairing, maintaining and cleaning of all party walls ... and as to the manner in which disputes and differences concerning such rights and obligations should be determined." [35]

Statutory Town Planning trespasses here into the realm of private property law, whose concern is the rights and obligations of individuals inter se. The power described above represented an intrusion into the private property law realm, beyond the recognised scope of planning in England [36]. It marked an increase in the powers of planning administration in Palestine to intervene in purely private property law matters.

The attitude towards landowners' rights in relation to the planning process was very different when it came to the most powerful landowners, the religious bodies. These bodies, which had extensive property rights throughout the Holy Land, had a special procedural advantage compared with any other landowner. For example, they were entitled to receive notice of the deposit of any scheme which might affect their property. The origin of this provision could be found in the 1921 Ordinance [37], and in 1936 this privilege was extended

further due to the sensitivity attached to dealing with religious bodies, especially after the 1929 disturbances. Although this special arrangement caused many difficulties to the planning authorities, particularly in places like Jerusalem, a suggestion to limit the arrangement was rejected. The Attorney General commented on that suggestion: "Nothing should be done which might disturb these bodies." [38]

5. Positive and Restrictive Tools
for the Implementation of Planning

The 1936 Ordinance followed the tendency of the 1929 Ordinance in moving from a managerial attitude towards a merely regulatory stance. The powers and resources for plan implementation were still matters dealt with by the statutory scheme [39]. However the important role played by these managerial aspects in the first Ordinance were changed in 1936 by a stronger emphasis on the other aspects of planning.

One reason for this change were the difficulties in ensuring the financial resources for institutional implementation of schemes. This problem led one District Commissioner to suggest: "that provision for betterment tax should be omitted on the grounds that its collection has been practically impossible hitherto." [40] This suggestion was not fully accepted, but the problem of collecting this tax led the legislator to modify the general obligation to collect betterment tax. The authorities were given a discretionary power to collect the tax in individual cases [41]. Obviously such a discretion

could be abused by discriminate implementation. The Attorney General, on commenting on the exercise of this power, said that the authorities "may use this discretion as a bargaining lever in cases of expropriation." [42]

Development control was the task of the new type of local commission. The district commissions had, however, appellate powers and in general the 1936 Ordinance did not change the existing measures for controlling development, although the scope of control was slightly widened by requiring permission for any structural internal repairs [43].

Law enforcement measures under the 1936 Ordinance were more innovative. In order to combat the growing unauthorised development, penalties were increased. The courts were also provided with extensive powers to issue orders for the demolition of unauthorised structures, not only against the offender but "against any other person" [44]. By such extension the offence of unauthorised building was not yet made in rem but the law extended the liability in personam. This was done to prevent a transfer of ownership defeating an order for demolition [45].

B. STATUTORY PLANNING IN ACTION DURING THE SECOND STAGE

The second stage in the evolution of Mandatory statutory planning began after the reform of 1936 and lasted until after the Second World War and the withdrawal of the British from Palestine in 1948. Planning as a government activity was considerably improved during this period due to the appointment of the Town Planning Advisor, Henry Kendall. Greater interest was shown by the central and local authorities, as well as by the local public.

The first significant act under the new law was the expansion of the area covered by planning law. In 1937 the number of declared Town Planning Areas was doubled from 14 to 28 [46]. This process continued in 1938 with the establishment of 5 more Areas and the introduction of a new category of planning area, known locally as Regional Areas, which covered rural and suburban areas in each administrative district [48]. By 1948 there were 46 planning areas. Of these, 24 covered cities and towns, 16 covered areas of local councils, and in each of the 6 administrative districts a Regional Area was declared to cover the remaining land [39]. The objective of bringing the entire area of Palestine under the jurisdiction of planning law had been achieved.

By the end of the second stage the machinery of district and local commissions was well established. However, the working of the planning machinery, particularly in the mixed towns, encountered many

difficulties concerning statutory schemes due to the civil strife of 1936-39 [49] and the Second World War decelerated the entire process of planning and development in Palestine.

During 1937-39, despite the disturbances, Haifa, Jerusalem and to a lesser degree Tel Aviv, were the main areas of plan preparation activity [50]. Although there was a considerable decrease in building activities as compared to the boom years, planning institutions were largely concerned with the consideration of new and amended statutory schemes, principally for the main cities. In 1937-38 the number of approved schemes in Haifa, Jerusalem and Tel Aviv actually increased. 184 schemes were considered in the Northern district, 178 in Jerusalem and 92 in the Southern district.

The above figures include a wide range of schemes, from small parcellation schemes submitted by individual landowners to amendments to the outline scheme itself [51]. Not every area was covered by an outline scheme, however, despite the legal obligation to prepare such schemes. The intensive scheme preparation was, in the event, no more than a process of updating old schemes in the light of the development which had taken place. This process was really the legalisation of unauthorised buildings. Statutory schemes were sometimes of such a limited scope and so detailed as to resemble the current English planning application rather than a development scheme.

The newly established Town Planning Department provided some technical help, mainly to the Arab sector, but even so the consideration of detailed schemes and the exercise of development control was often done without an overall view as to future development.

The explicit provisions of statutory planning remained predominantly physical, dealing with outward appearances.

The years of the second stage were marked politically by the British retreat from the policy expressed in the Balfour Declaration and the Mandate for Palestine. A Royal Commission [52] which was sent to look into the causes of the Arab rebellion in 1936 recommended a partition of the land between the two communities, with some territory under British control. It also recommended restricting Jewish immigration for five years to a maximum of 12,000 persons a year. The situation deteriorated after Arab rebellion of 1936-39 which led to the White Paper of 1939 and the imposition of drastic restrictions on Jewish immigration and Jewish activities in land purchase and development.

The years between 1945-48 were politically the most difficult of all. Anti-British protest and inter-communal clashes led to terrible bloodshed. The situation continually worsened and became too heavy a burden for Britain to bear. This led to the decision to hand back the Mandate to the United Nations.

Against this political background, the implementation and revision of statutory planning can be seen as part of a more comprehensive policy of attempting to impose law and order on the one hand, and preventing further imbalance in the development of the rival communities on the other.

Civil strife affected both the activities of the British administration and actual development initiated by local institutions. The Government of Palestine was mainly preoccupied with internal security problems. The new planning attitudes which were then gradually being implemented in Britain [53], i.e. comprehensive regional master plans [54], decentralisation of population in new towns, and so on, were the least of concerns of the government in Palestine, where law and order were of utmost priority.

As during previous periods of political turmoil, the disturbances during this stage led to a reexamination of various government tools and policies, of which statutory planning was one of the most important for ensuring government control. Review of the system was also made urgent in the light of the criticism of disorderly building activity, particularly in the City of Jerusalem.

The principal Ordinance of 1936 was amended no less than four times within five years [55] due to this review. Changes were also made in the subsidiary legislation. Most of these amendments were technical and of secondary importance, aiming at curing defects in the drafting of the principal law [56] or attempting to make the

operation of planning machinery more efficient. However, the prime concern of these amendments was the tightening of government control over development activity throughout Palestine and providing authorities with better tools for the enforcement of the law. Parts of these amending Ordinances were substantive and worth consideration at this point.

1. Town Planning (Amendment) Ordinance 1938 [57]

This amendment came after six months' experience of the implementation of the principal law [58] and was influenced by recommendations made by experts in the Colonial Office in London. As the explanatory note in the draft stated: "This Ordinance amends the Town Planning Ordinance 1936 mainly in order to enable the town planning authorities to exercise tighter control over the appearance and use of buildings" [59]. The scope of development control was extended to cover not only building but also use of land and buildings. The Ordinance also increased the stringency of enforcement of the law by providing a penalty for continuing offence and giving power to the court to make any order "as the court seems fit" against a person convicted of a planning offence or any other person [60].

These new measures only slightly improved enforcement of the law. In general, local building activities responding to the high demand for housing and other constructions remained outside any effective control.

Soon after the 1938 Ordinance a new amendment to the principal planning Ordinance was enacted.

2. Town Planning (Amendment) Ordinance 1939 [61]

The main innovations of this Ordinance related to the functioning of planning institutions and marked a further step towards decentralisation of planning machinery. Under this law, District Commissions were given the final power of approving detailed schemes within their districts [62]. The only scheme which now needed the approval of the High Commissioner was the outline scheme [63].

District commissions - the long arm of the government - were also given more powers to control the way planning law was implemented. Under these powers they were able to control the composition of local commissions in rural areas. The law enabled each district commission to appoint a panel from which it could, from time to time, appoint members of the rural local commission to serve for particular meetings [64]. This was in addition to its power of making permanent appointments. This was explained officially as a necessary measure for the large regional (rural-suburban) areas in which representatives of different settlements could participate whenever decisions relating to their localities were under consideration [65]. In fact, it is obvious that this power could easily be abused by changing frequently the members, thus ensuring that the composition of the local commission was free of members not following the government line.

The district commission was also given the discretion to order that development control should not apply to certain areas, or should apply subject to modifications [66]. This was explained as being necessary to loosen the control in regional areas [67]. By law, however, this discretion was not limited to such areas and enabled the central government to manipulate the use of control over development as a governing tool and a cover for political discrimination throughout Palestine.

Two years after this amending Ordinance, practical experience led to yet another amendment of the principal Ordinance in 1941.

3. Town Planning (Amendment) Ordinance 1941 [68]

The major part of this Ordinance dealt with the enforcement of planning law and followed the tendency of increasing control over land development. As officially explained, the aim of the amendment was "to increase the still inadequate penalty provisions" [69]. Under these provisions [70] court orders for demolition or interim stoppage of building construction were regarded in rem and not merely in personam. They also enabled the authorities to apply to the court to vest with them the power to carry out an order of demolition or any other relevant order [71].

It should be stressed that this intensive legislative and administrative effort to combat illegal building activity in

Palestine was generally fruitless. Development was one of the most unruly areas of public life in Palestine; the enforcement of the law was very weak and there was widespread unauthorised building.

This phenomenon had its roots in the political situation in Palestine and the nature of its government. The Mandatory regime was at this stage seen by both Arab and Jewish communities as an alien imposition and an obstacle to the realisation of their respective national aspirations. The control imposed by this regime on physical development was seen by the Jews as a hindrance to the absorption of Jewish immigrants by neglecting the needs of the Jewish community. It was not surprising that the local Jewish authorities did not participate wholeheartedly in the enforcement of planning law. Indeed, they had an ideological justification based on national interests for violating planning law. Unauthorised building activity, in their view, was the same as illegal Jewish immigration: both expressed revolt against the British government. The fact that poor planning resulted in the deterioration of urban and rural environments was regarded as of secondary importance compared with the necessity to provide housing and other facilities for the Jewish population. The attitude and behaviour of Jewish local authorities can also be explained in relation to their position in the political power structure of the Jewish community, as described below.

The enforcement of planning law in the Arab sector was also very weak. There were often clashes between modern European planning concepts and Arab traditions, and the Arab community could not see the immediate advantages of orderly planning, but only the disruption

it caused to their own methods of development. They were suspicious of alien methods and their local institutions barely participated in the enforcement of the law.

The restrictions on private building, imposed by the central government of Palestine during the Second World War in order to satisfy military construction requirements [72], were more effectively carried out because of lack of building material. Thus private development during this period came to a standstill.

At the same time there was a dramatic increase in investment by the government and army, leading to the modernisation of the entire country's road network and infrastructure.

C. THE DEVELOPMENT OF PALESTINE DURING THE SECOND STAGE

Compared with the boom in land development during the early 1930's, most of the years of the second stage were marked by a sharp drop in local development in Palestine. However, the post-war period witnessed a rapid revival in the pace of building and land settlement projects.

1. Development by the Government

Towards 1936 the Middle East became even more vital for British strategic interests due to several events in the international arena such as Italy's success in the Abyssinian War and Germany's moves in Europe [73].

The resulting reassessment by the British of the strategic value of Palestine led to the decision to construct military bases for stationing the Imperial British Mediterranean reserves in that country. This also involved investment in a road network and other infrastructure, particularly in the central area between Tel Aviv and Jerusalem.

Paradoxically, Palestine benefited from the Second World War in that the war resulted in large scale physical and economic development of the country. All development activity was planned and carried out by the military and government public works authorities. It covered a nationwide communication network, airfields, military

camps and other elements of infrastructure [74]. This development was implemented without any regard to the statutory planning process [75], but under special powers given to the authorities under new laws. The development agencies of the army and the administration operated according to their special considerations and interests, presenting faits accomplis in the physical development of Palestine. In many cases, adjustments of the statutory schemes were necessary afterwards, but at the time the extensive government development activities ignored the planning machinery created by the planning law.

During this stage, civil development was of minimal concern to the government. Despite the publicity given to its activities in housing improvements in the Arab sector [76], the administration did very little to alleviate this problem. In the pre-war period, some 76 families from Jaffa were rehoused by the government and a promise given to help private housing projects in Haifa with the provision of access roads, water supply and sanitation.

A more comprehensive planning and development project was prepared for the Arab villages of Palestine [77] in 1940, after a directive from the Colonial Secretary and as part of the general policy of pacifying the Arab population. It was a multi-disciplinary project, covering themes such as physical planning, housing, sanitation, education, health, agriculture and afforestation. It was largely funded by the local people themselves, with little contribution from the government. In the event it was of such limited scope that it was of minor importance in the development of Palestine

and living conditions among Arab villages remained very poor.

Despite its failure, the modern approach of this development project which comprised many socio-economic and physical aspects of rural development was remarkable. It demonstrated the ability of the administration to prepare a sophisticated scheme to deal with urgent environmental problems. At the same time, the lack of further projects of this kind illustrated the unwillingness of the administration to commit itself to any meaningful development of the country.

2. Development by Local Population

Between 1936 and the end of the Second World War approximately 111,000 legal and illegal Jewish immigrants entered Palestine [78]. This was a very small number compared to the number of Jews trying to escape from Europe. It did, however, lead to a growth of 17.7 percent in the total Jewish population of Palestine.

In the same period the non-Jewish population grew by 11 percent, largely due to natural increase. By 1948 there were about 1.25 million Arabs and 650,000 Jews in Palestine.

This population growth had a dual effect on land development in Palestine. While the moderate population increase resulted in relatively small investment in the building industry, the growth did increase the demand for housing and put greater pressure on the existing physical structure.

In the years 1936-39 the sum invested by the private sector in physical development did not exceed eleven million pounds sterling [79]. This low figure compared with investment in the previous stage reflected a sharp decline in private construction in terms of floor area. This dropped from 1,214,608 square metres in 1935 to 223,639 square metres in 1939. Further, from 1940 to 1944 the total floor area built by the private sector was no more than 386,031 square metres [80].

The years during the war led to further deterioration in the overcrowding and inadequacy of housing in the existing cities. In 1942-43 poor living conditions among both Arabs and Jews contributed to an outbreak of bubonic plague in Haifa and in Jaffa, and a typhoid epidemic in Tel Aviv. In an anti-plague drive many of the makeshift unauthorised houses were demolished, though they were soon rebuilt for lack of alternative housing [81].

The White Paper policy of restricting land sale to Jews reduced the supply of available land. This, together with the wartime inflation, led to sharp increases in the prices of urban and suburban land. By 1944 the price of land was two and a half times more than before the war began, and development costs more than trebled due to an increase of 350 percent in the prices of building materials [82].

All the above factors hampered an orderly development of urban areas and promoted further concentration of population in the cities of Tel Aviv, Jerusalem and Haifa, particularly on the central coastal plain. From a national and regional planning point of view, this posed a serious problem which, at the time, was neglected by the Jewish national institutions.

The lone voices expressing concern over this matter were the few professional planners, among them Eliezer Brutzkus. Brutzkus' plan for physical planning at national and regional levels was introduced as early as 1938 [83]. In line with Tischler's plan [84], the underlying principle of this plan was that the dispersal of the urban population was the key for the development of the country. In order to achieve this objective of decentralised land settlement, Brutzkus emphasised the need to develop new types of small urban centres and semi-urban settlements throughout the coastal plain and Jezreel Valley.

The various types of settlement under this plan would have functional inter-relationships with both the big cities and the small rural villages. A precondition for the realisation of this plan was the reconciliation of Zionist-Liberal ideology of a free economy, private capital and urbanisation, with the rural-collectivist ideology. In view of the internal political structure within the Jewish community, in which the Socialist-Zionist parties and their ideology dominated, such reconciliation was not feasible.

Thus Brutzkus' ideas, though they were an impressive vision of modern planning, did not lead to any changes at this stage. The plans of both Blintzlin and Tischler were not accepted in the pre-State period by the Jewish central institutions, though they were to influence the evolution of town planning in the State of Israel.

D. TOWN AND COUNTRY PLANNING BILLS 1945 [85], 1947 [86]

Towards the end of this stage of statutory planning in Palestine, a new Town Planning Ordinance was in preparation. This was designed to consolidate and amend the four existing Ordinances and the numerous sets of by-laws and rules [87]. The proposed law was first published in the form of a Bill in 1945 and, after revision, was republished as a Bill in 1947. As these Bills reflected the perceptions of the post-war period and influenced practice during these years [88] as well as the future evolution of statutory planning in Israel, they are worth describing at this point. It should be stressed, however, that the proposed Ordinance was again modelled on the English 1932 Act, though with many changes: some of the most updated post-war English concepts were adapted to meet local needs [89]. Thus the new drafts not only preceded chronologically the English Town and Country Planning Act 1947, they were also in some respects more advanced than their English counterpart.

On the surface, the last version of planning legislation in Palestine, as expressed in the Bill of 1947, was very different from the first Town Planning Ordinance 1921. It had more parts containing more sections, and included sophisticated legal definitions. Nonetheless it remained a very similar tool with similar purposes of regulation, local orientation and general intent to ensure control by the Mandatory government over development of the land.

The most important innovation of the 1947 Bill [90] related to the fiscal aspects of town planning; i.e. imposition of planning rates. Other important proposals were in regard to planning administration, statutory schemes and further restrictive measures to ensure the implementation of schemes by development control and the enforcement of the law. The Bill also included a uniform set of rules which previously had been part of scattered subsidiary legislation, varying from one district to another.

The planning perceptions expressed in the official statutory system were again in sharp contrast to those of the Jewish sector. The influence of the ideas of individual planners on the central Jewish institutions were, after the Second World War, much greater than before, and by 1945 the Jewish Agency had begun preparing plans and programmes for extensive land development which included a markedly positive planning approach, in addition to regulative planning measures. The major document dealing with planning was a report on physical planning prepared by a sub-committee of the Jewish Agency [91].

The Report's approach was that of integrated physical-economic-social planning. It pointed out the basic factors of a small country with diverse geographical regions, its economic potential and the social requirements of both the existing population and the expected waves of immigrants. Planning, concluded the Report, would ensure optimal utilisation of resources to the benefit of this growing society. For this, local planning orientation of city, town

and village was insufficient. Planning required in addition regional and national perspectives. The Report recommended compulsory planning organisation at three levels (national, regional and local), together with three types of plan. The assignment of land for various purposes was seen as central to these plans: the main categories of land use were residential, agricultural, industrial, recreation and land for communications networks. Land assignment was to be carried out through national policies which were referred to in the Report. These included the dispersal of the population while creating a hierarchy of urban and rural settlements, dispersal of industry, a modern communications network, and recreation areas throughout the country.

Planning legislation was considered an important tool for the realisation of proper planning and development. However, introduction of the recommended legislation would have committed the Mandatory government to the establishment of a Jewish State. A recommendation to use fiscal legislation to advance planning objectives and urban speculation in land was also included.

This Report was comprehensive and detailed. Of most importance were the ideologies and perceptions which underlay its recommendations. These expressed a marked trend towards involving representative institutions in the decision making and implementation processes. With a view of a future Jewish State in mind, the Report vested the main responsibilities and powers with the democratically elected government and public administration. The Report also expressed the central role to be played by rural settlement in the development of the country, though it also advocated urban

development as the major tool for the absorption of new immigrants. The main housing and construction agencies were to be the governmental bodies and the public sector, which were preferred to the private sector. Extensive powers to expropriate land and restrict private rights were vested in these bodies. Here the anti-private capital attitude prevailed.

The major Zionist principle in this Report of positive planning and extensive development should not be disregarded. This Report was a bridge from the first to the second era of planning under the State of Israel, which enabled the implementation of planning along the principles outlined in the Report.

PART II

STATUTORY TOWN AND COUNTRY PLANNING IN ISRAEL 1948-1980'S

Part II deals with the Israeli planning system, paying particular attention to its statutory branch. From 1948 to the 1980's, this system underwent an interesting evolutionary process. While its roots were in the Mandatory period, it developed into a particularly Israeli product. Obviously the revolutionary changes experienced by the country since independence affected the structure and content of its planning system and the way it was implemented. Of particular importance to this analysis are four groups of contributing factors: physical-geographical, socio-economic, political-administrative and defence. Their interaction with statutory planning is analysed below.

The underlying theme of this part, which is that Israeli statutory planning, as well as the planning system as a whole, being a reflection of several ideological and political conflicts, was designed and used as a tool for social control for the following:

1. To help the central government assume authority and control over local authorities and populations.
2. To help the Ministry of the Interior gain status and power in its relationship with the economic ministries as well as over local authorities.

3. To help local authorities wield power over their respective populations for political and financial gain.
4. To help non-institutional organisations and individuals pursue their factional and private interests.

The period under consideration covers about 35 years of Israeli Statehood. This period is divided into two: 1948-1965 and 1965-1980's. The year 1965, which saw the introduction of new Israeli planning legislation repealing the old law, is the turning point in the system.

Since independence of the State of Israel, the English planning system was, to a limited degree, the model for the Israeli system. Some of the developments in the English system which to a great extent correspond, by coincidence, with the two stages of development in Israel, may help evaluate the Israeli system and are referred to below. There were and are, of course, still tremendous differences between the two countries in respect of territory, population, level of development and the nature of problems. Yet the planning systems share many common characteristics which enable, if not a full comparison, at least a glimpse into the machinery and the policies of the English system as a means of evaluating the solutions offered in Israel. It should be stressed, however, that there is no universality in the evolutionary stages of the planning laws in the two countries. Furthermore, it is obvious that the momentum of past events and the diversity of social, physical and economic structures, have led to different paths of statutory development.

CHAPTER 6. THE NEED FOR TOWN PLANNING AND FACTORS AFFECTING ITS
EVOLUTION

The new physical, political, socio-economic, administrative and legal circumstances prevailing in 1948, when the State of Israel was established, provided the setting for the introduction and implementation of the Israeli planning system. A short description of these circumstances is perhaps necessary for their relevance to an analysis of the evolution of the planning system.

By the end of the War of Independence, Israel's territory comprised only 21,000 square kilometres. This area covered most of the territory of Mandatory Palestine to the west of the Jordan River, excluding the central areas of Judea and Samaria.

The new boundaries created, amongst other things, new planning problems. The narrow coastal plain, where most of the Jewish population was concentrated, had become extremely close to the new frontier. At its narrowest point, the border was no more than 15 kilometres from the sea. Tel Aviv was in easy firing range from the hills of Samaria.

Jerusalem, the capital, was a divided city. Eleven percent of Israel's population lived in the Israeli section, while only a narrow, hilly corridor linked the capital and the centre of the country. Very few Jewish settlements existed in the relatively remote zones near the demarcation lines.

In the southern half, the Negev formed a triangle of which the apex was only 5 kilometres (3 miles) wide, on the shores of the Red Sea. Egypt lay on one side of this apex and Jordan on the other. The Negev was almost entirely unpopulated and had few roads. New Jewish settlements had to be established in order to control the area effectively. The same applied to the northern area, where the desolated hills of the Galilee had little Jewish population and contained mainly Arab villages [1].

These new geopolitical conditions added to the diversity of the geographical regions, climatic conditions, vegetation zones and the scarcity of natural resources (particularly arable land and water) as described in Part I of this work.

The accumulated effect of all the conditions, combined with the realisation since the war that settlement ensures control, contributed to the formulation of Israel's main planning policy. This was to support the defence and security needs of Israel by maximal deployment of new Jewish settlements in the zones near the armistice lines and the scarcely populated areas. This policy advocated a balanced development, rather than an exaggerated concentration on a few urban and rural areas.

Notwithstanding the rapid development of the country up to 1948, on the threshold of its independence it still offered an enormous challenge in regard to its town and country planning. The centrally directed processes of populating, urbanising and

industrialising the newly established state, which began in 1948, not only offered ample planning opportunities, but also made vital rational planning at national, regional and local levels. In fact, Israel became a laboratory for planning and development experiments.

In 1948 the local population lived in three main types of settlements: urban, rural and semi-urban villages [2]. In contrast to the Arab population [3], the Jews were concentrated in urban settlements. In 1948, 83.9% of the Jewish population lived in the big urban centres and only 16.1% in small rural settlements [4]. Any further growth of the big cities presented a real threat not only to national security but also to the standard of living of the urban population. The Barlow Report [5] which pointed out the problems of the highly congested cities was well accepted by the Israeli planning profession. Thus the environmental aspects of life in the central regions added weight to the decision to adopt a population dispersal policy.

In line with this policy, a hierarchic structure of settlements was also formulated. As previously mentioned, only the extreme types of settlement of that hierarchy existed in 1948 [6]. Medium and small size towns outside the coastal area were almost non-existent. Intermediate ranks of settlements were required in order to diminish this uneven development. The hierarchy of settlements was intended to provide a rational utilisation of land resources and an integrated development of urban and rural settlements. This became another policy in the new planning system.

Important as the physical and geopolitical conditions were to the formulation and operation of the Israeli town planning system, the task of absorbing Jewish immigrants had an equal influence on planning. This became in fact the main means of achieving population dispersal.

The new circumstances following independence in 1948 allowed the opening of the country's gates to Jewish immigration. This enabled the realisation of one of the fundamental tenets of Zionist ideology, which was the building of a country open to all Jews, in which they would be able to affirm their Jewish identity in conditions of security and dignity. To achieve this, they had to form a majority of the population. This ideology was reflected in the Law of Return 5710 - 1950 [7].

In the first years of Israel's existence, the outstanding characteristic of its population was the rate of its demographic growth. Since 1948 the country's demography has changed dramatically. Two processes contributed to the transformation of the social composition of the population within this short period. First was the mass Jewish immigration and second the 1948 Arab-Israel war. Between May 1948 and December 1951 the Jewish population doubled, from about 650,000 to 1,334,201 [8]. At the same time, about 500,000 Arabs [9] left the country as a result of the war while only 156,000 remained [10].

Consequently a state previously composed of two major ethnic groups was transformed into a more homogenous society dominated by a Jewish majority. Whereby in the past the three major communities, British, Arab and Jewish, had very different perceptions as to the planning and physical development of the country, the new situation offered great advantages for the formulation of a coherent and consistent planning system.

The new immigration, however, led to radical changes in the demographic characteristics of the Jewish community itself. Whereas prior to 1948 the majority of the Jews (54.8%) came from European countries (known as Ashkenazi Jews) and only a minority came from Asia and Africa (known as Sephardi Jews), the newcomers in the first years of the State were divided more evenly between 334,971 Jews of European and American origin (50.3%) and 330,456 Jews from Asia and North Africa (49.7%). Moreover, subsequent waves of immigration tipped the balance in favour of immigrants from Asia and Africa. Between 1957 and 1964, a further 284,735 Jews settled in Israel. Of these, about 57% were Sephardi Jews and only 43% were Ashkenazi. By 1965, out of a total Jewish population of 2,299,078, 40.4% were Israeli-born, 28.3% came from Asia and Africa and 31.3% came from Europe and America [11].

In addition to demographic characteristics, other factors also demonstrate the social differences within the Jewish community. There was a cultural and economic gap between Ashkenazi and Sephardi Jews. The latter were characterised by large families, strong clan ties and

a greater affinity with Jewish tradition. Social tensions arose from the Sephardi struggle against the predominantly Western-oriented society. In addition, the community faced problems related to the survivors of the Holocaust in Europe, who suffered from their traumatic experiences there and had great difficulties in returning to a normal way of life [12].

In view of this social polarity, the national goal of integrating the Jewish immigrants into one society, while blending their contrasts, was an important aim in the processes of planning and physical development.

The waves of immigrants could not be delayed until the implementation of proper planning, nor could their numbers be regulated by the State. There was a sense of urgency in helping immigration, both from the immigrants' and the State's point of view. About 85% of the immigrants arrived penniless and were totally dependent on the State for housing and employment. The resulting incessant demand for housing was met in every possible way [13]. This included the provision of temporary and permanent housing in urban areas and agricultural villages. At first all existing dwellings in towns and villages, including British military camps and abandoned Arab houses, were used [14], after which transition camps, consisting of tents, shacks and huts, were erected to provide communal housing. These too were soon filled to capacity and living conditions deteriorated rapidly.

In 1950 another temporary solution was provided in the form of Ma'abarot, neighbourhoods which included dwelling huts and community services. Such quarters were set up throughout the country, and by 1952 there were 113 Ma'abarot with a population of 250,000 [14]. The replacement of temporary housing, while providing dwellings for further arrivals, was the core of planning and development activities.

During the years of this first stage, about 250,000 dwelling units were built by public housing companies; private builders erected approximately the same number [15]. Probably some three quarters of Israel's population lived, during these years, in flats or houses erected since 1948. Housing was merely one component of the planning complex which led to the establishment of about 30 new towns and 450 new villages. These figures give some indication of - to use Akzin & Dror's phrase [16] - the "high pressure planning" and physical development which characterised the Israeli system.

Immigration had other sweeping effects, such as on Israel's economy. During the first years of its existence, Israel faced a severe food shortage. This necessitated an immediate increase in agricultural production and the development of industry. In view of the paucity of agricultural land and the scarcity of water, agricultural planning and control of the urban sprawl received a great deal of attention, while less effort was put into industry in these years. In addition, for established ideological reasons agriculture was seen as more than just an economic matter. It was

therefore given priority over all other economic measures and over the use of land for habitation and recreation. The struggle between the urban and agricultural sectors continued to be reflected in the planning system. The prevailing ideological sympathy for agriculture as an ideal way of life contributed to an explicit policy of protection of agricultural land and, in general, a system which favoured this sector out of proportion to its economic contribution.

Despite many adverse factors, the Israeli economy was marked by its swift rate of growth in and since these formative years. The increase in the GNP was necessary to maintain the shakily-based State and to make possible the absorption of the large number of immigrants. This growth in GNP was the result of an infusion of labour and capital. The large investment, the increase in the work force and in the capacity of the market led to the growth of total per capita and production. However, largely due to special security and social needs, Israel was, and still is, far from economic independence and is constantly deeply in debt [17].

The heavy economic burden was obviously beyond the ability of the local population and capital required for rapid urbanisation and industrialisation came mainly from abroad through contributions, grants-in-aid, loans, commercial credits, etc. However, as the funds did not keep pace with actual need, planning was necessary as a means of distributing scarce resources within the society. An integrated approach to physical, social and economic planning was of supreme importance. Whether such an approach was employed will be discussed below.

The strong dual tendency towards longterm planning on the one hand, and improvisation on the other, which characterised the Jewish community in Palestine [18] did not stop with the achieving of national independence. On the contrary, the objective needs and new possibilities encouraged large scale planning combined with pragmatism in development. However, the commitment to ideological goals and social values, both old and new, were more in evidence in planning than in the improvised activities. Since the ideological dimension of planning provides an important insight into the Israeli system it will be considered here.

The planning system gave rise to social intricacy and ideological diversity. Some of the conflicts were rooted in the pre-State ideological and political conceptions described in part I. Others were the result of the social changes of the new era which began in 1948. Different images of the ideal society and the means of attaining that society were expressed in the prevailing ideologies and values. The most relevant of these to the nature, character and content of the Israeli planning system are outlined here, and we shall return to them when dealing with the various components of the system.

A. THE PERCEPTION OF STATEHOOD: NATIONALISM VERSUS FACTIONALISM

The many years of problem laden life in the Diaspora and under foreign rule in Palestine created a strong desire for Jewish sovereignty. The establishment of Israel led to an increasing tendency to exhaust most of the possibilities offered by an independent, democratic country. A condition of this was, of course, the affirmation of the state's sovereignty and the government's authority both internally and externally. With regard to the internal aspect of such affirmation, there was an excessive use of the new powers of the executive, legislature and judiciary. The use of these powers demonstrated the transition from a non-sovereign community to a fully-fledged state. In so far as town planning was a function of the government, the concept of statehood explains the extensive positive and restrictive planning activity carried out by many government institutions and the legislative activity in the fields of planning, housing, rehabilitation, national parks and others which took place in later years. The new perception was of the national good rather than old factionalist tendencies [19].

B. ZIONIST IDEOLOGY IN THE ERA AFTER THE ESTABLISHMENT OF THE STATE

In 1948 the most difficult part of the political struggle for the realisation of the Zionist programme was over. Through the signing of the armistic agreements and recognition by the United Nations and other countries the Jewish State became a reality. The emphasis of Zionism subsequently shifted to maintaining the State and making it a centre for world Jewry. Values such as commitment to national defence, pioneering effort in land development (particularly the conquest of the desert), social equality and social integration were all part of the new-old Zionism. A series of national planning policies reflected many of these values. Under the influence of Western individualistic tendencies, however, Zionist ideals became more meaningful at an insitutional operative level than as a catalytic force affecting individual behaviour, and the pioneering motive declined. This development required extensive institutional effort aimed at encouraging public involvement in national tasks. The centralised effort to encourage public dispersal throughout the country is only one example of this [20].

C. REPRESENTATIVE DEMOCRACY AND PARTICIPATORY DEMOCRACY

The political success in the establishment of Israel, the military victory, the social innovations and economic growth all paid off for the political leaders in terms of trust and admiration of the public. The ruling elite was given great credit for leading the country to independence. In addition, some of the leaders had charismatic authority.

In these formative years, care for the public good was regarded as almost exclusively the realm of elected politicians and nominated officials. Direct involvement of the public in decision making was minimal, partly because of the state of war and emergency and partly because of demographic changes. The free hand given to the government, together with the pre-State community traditions, led to the ideological concept of informality and functional flexibility of administrative behaviour. The prevailing principle in the bureaucratic culture was of modus vivendi [21].

The institutional deviance from administrative rules acquired legitimisation and led in turn to anomic and ambivalent feelings towards definite legal norms. This explains much of the divergence from agreed planning policies and statutory planning provisions by both central and local government. The public at large and private institutions attached little importance to the breaking of planning laws [22].

Today there is growing pressure in Israel for a professional bureaucracy and proper administrative behaviour, particularly in the sphere of the environment and quality of life. Through the years the concept of individualist democracy has become increasingly popular. Administrators and politicians were placed under greater public scrutiny. Pressure groups concerned with various issues were formed. Everybody wanted a greater say in the way things were run. The administrative process, however, is still very much in the hands of the authorities and the level of direct involvement of the public in decision making is still fairly low compared, for instance, with the United Kingdom. In the planning system this means only limited changes by institutional planning (i.e. planning by politicians, administrators and professionals) towards a greater share in planning by the general public.

D. COLLECTIVISM VERSUS PRIVATE INITIATIVE IN PHYSICAL AND
ECONOMIC DEVELOPMENT

For a great number of years, the concept of democratic socialism dominated the ideological-political scene within the Jewish sector. The powers of the State were seen as legitimate tools for pursuing social progress and the welfare of the community. Besides the State, several communal institutions continued to function in their pre-independence capacities. The Jewish Agency dealt with the absorption of immigrants and the establishment of rural settlements. The Histadrut (the central trade union) played a significant role in the creation of new industries and big building companies. Collectivism in the sense of public rather than individual effort continued to be accepted as the best means for developing the country. Here again, however, the growth and success of the private sector in economic and political terms, together with the inefficiency of public sector institutions, resulted in a shift from collectivism to private initiative. The effect was felt mainly in land development, where there was a greater reliance on market forces [23].

E. AGRICULTURAL WAY OF LIFE VERSUS URBANISATION AND
INDUSTRIALISATION

This ideological struggle is rooted in the pre-independence period. However it was strongly influenced by new conditions. By 1948 it became clear that absorption of mass immigration could only be carried out through urban development and industrialisation. Lack of arable land and water on the one hand, and the existence of modern methods of production on the other, did not allow a large scale absorption of immigrants into the rural sector. Despite this, the agricultural way of life was still seen as the ideal form of the realisation of Zionist values. The orientation of the rural sector was clear while pre-State, anti-urban attitudes continued to prevail among politicians and planners alike. However, the urban sector gradually acquired political strength and ideological legitimacy, which in turn led to changing attitudes regarding the role of the town in the emerging society. As a result, urban problems received much greater attention [24].

Since town planning is an inseparable part of the overall legal and administrative systems, in Israel as well as elsewhere, a short description of these in the early days of statehood is worthwhile.

The revolutionary phenomenon of the establishment of the new state resulted in the cessation of the sovereignty and the legal continuity of the existing system and the creation of a new Israeli one [25]. However, this was only in formal terms. In the midst of the

harsh first days of statehood, and in order to prevent any legal vacuum, the new system remained in substance a continuation of the old Mandatory one, with almost no modifications. The first statute, the Law and Administration Ordinance 5708 - 1948 [26] prescribed that: "The law which existed in Palestine on ... 14th May 1948 ...shall remain in force insofar as there is nothing therein repugnant to this Ordinance or to the other Laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities". This reenactment of the previous positive law, including the Town Planning Ordinance, sometimes created great confusion, since some of the legal tools reflected the Mandatory colonial philosophy which contrasted with the democratic nature and Jewish character of the newly established State. The law was thus subject to gradual transformation and slow adjustment processes, first by means of interpretation and implementation and later by new legislation. Since the previous statutory planning system was wholly adopted by the Israeli legislature, it is important to consider where, when and why a departure from the old provisions was or was not made. This will be done below when amendment laws to the Mandatory Town Planning Ordinances are discussed.

The constitutional jurisprudence of Israel is grounded in Common Law conceptions. Under the principle of dispersion of powers, the executive has the power to carry out in the name of the State any activity which is needed for governing the country [27]. This undefined power is subject to any law explicitly stating the powers of the executive and to basic constitutional principles. Matters

concerning foreign relations, national security and domestic policy are, when not committed by statute to the executive, part of its inherent and residuary powers to run the country's affairs [28]. The particular aspect of domestic policy (i.e. town and planning country) with which we are concerned here has been pursued in part in accordance with specific statutes and in part under the general powers of the executive. As a result two branches, statutory and non-statutory, formed the official planning system of Israel.

The institutions of the new State were formally established soon after the Declaration of Independence on May 14, 1948, though in practical terms the transition to the new Israeli administrative structure took place in the course of the first years of statehood. The Law and Administration Ordinance 5708 - 1948 [29] established central and local government institutions and defined their responsibilities and powers. A Provisional Council was set up as the legislator. It elected 13 members to be the Provisional Government (Cabinet). These institutions acted until proper elections were able to be held in 1949 [30]. These institutions provided merely a new formal framework which was managed by the staff of the pre-state Jewish communal bodies. In this way there was a continuity in the political structure and the assumption of government was achieved smoothly, without shaking the foundations of Jewish society [31].

As part of the central government machinery, district administration [32] (which corresponded to the regional level) was reestablished within the previous geographical boundaries of the districts [33]. In each district a planning commission was

established and the districts inherited the old titles. Thus Gaza, Sumaria and Loddy districts functioned in regard to that part of their previous territory which was within the State of Israel. It was only in 1953 that a new division of six districts and 14 subdistricts was set up [34]. (This was an adaptation of the administrative boundaries to the new circumstances.) The new division only applied to planning commissions at the district level while local commissions continued to function within the local authorities boundaries.

The newly established governmental authority replaced the previous British administration and thus assumed, among others, the rights of the Mandatory government [35]. This included the ownership of natural resources: water, minerals and extensive property rights which were of paramount importance to the operation of planning and land development. This legacy of public ownership of the national assets was greatly welcomed by the new government and was legally consolidated and enhanced through the years because it tied in well with its ideology of collectivism [36]. The state became in fact the biggest landowner. State domain land together with the area in ownership of the Jewish communal bodies and land abandoned by Arabs under government management [37], gave the government control of 93% of the total area of Israel [38].

Since 1960 most of this land has been under the central management of a statutory board, the Israeli Land Authority (ILA) [39]. However it should be stressed that the 7% privately owned land was mainly situated within the main urban areas and the coastal plain, thus giving the private sector a far greater influence than

the quantitative figure suggests. Nevertheless, the extensive public owned land was crucial to the development of rural settlements. Even the further growth of the big cities depended on the surrounding land which was largely publicly owned [40].

Just how important was the public ownership of land to the accomplishment of positive planning can be realised when the Israeli case is compared to the British one. For example, in England the erection of the post-War new towns constantly involved local opposition and thus endless legal fights in public enquiries [41], while in Israel new towns and rural settlements were established, in general, by an administrative decision without the use of the land expropriation law [42].

Complementing the latter aspect is the dominant role played by the central government and the public sector in Israel's economy. Their active role and intervention is greater than in other western countries. Israel's economy has been highly publicly directed and state controlled. The government not only has extensive legal and administrative powers to control the operation of the market but also, by virtue of the considerable imported capital, it (together with the co-operative sector under its influence) is the leading force in the market. Government involvement is also revealed in its share in the national consumption, national investment, ownership of corporations and provision of employment. The government's indirect powers regarding the operation of the market include control over prices, subsidies and credits. It also includes administrative constraints: licencing, control of imported goods, and so on [43].

Contrary to the situation in Britain, the central government in Israel is generally charged with the provision and administration of major public requirements such as housing, public works, education and police. The local authorities have a secondary role in the supply and regulation of services. In this sphere, the private sector is not an important factor, though in some economic areas such as land development it is a major force. The private sector, however, is highly reliant on government decisions and actions. Thus the actual ownership of the means of production has lost much of its importance in circumstances of such extensive governmental involvement.

The political dimension in the operation of public administration in Israel is of great importance to the understanding of the planning process, since this decision making sphere is merely part of the more general bureaucratic activity. Functioning patterns of the administration in Israel during the formative years were rooted in the pre-independence traditions of the Jewish communal institutions as well as the British legacy [44].

Methods and procedures were adapted piecemeal to the new conditions. The administration has been highly politicised because of the extensive role played by the parties. This means that the border-line between legitimate political considerations in policy making and political discrimination by favouring particular political or social groups has been blurred [45]. Since politicians in Israel generally played a much more significant role in the decision making process than the professional and administrators, the part of

political considerations (in the narrow sense of party interest) in that process was large [46]. Furthermore, the dispersal of political power between many factions and parties (a feature which reflects Israel's complicated social composition) and the disintegrated ideological perceptions has created a shaky balance within the Israeli government. Only a measure of basic consensus and a strong sense of pragmatism enabled a modus vivendi.

At the national level there has been a continuous need to form coalition governments. These have been based on one senior partner and a number of small parties as junior participants. The formation of a coalition government often acted as a counterforce to an integrated and consistent longterm planning policy. It involved political bargaining and resulted in the dispersal of powers, areas of responsibilities and resources between the coalition parties [47].

Once this was achieved, the cabinet has rarely intervened in the operation of the various ministries, which became very independent and adopted a line of sectionalism. Membership in a coalition provided a great advantage, especially to the small parties. A government ministry was a source of political and economic strength to the party of which the Minister was a member. Many posts were filled by members of the party, since no clear rules were set up for appointment of professional civil servants [48]. Thus the dividing line between the state's administration and the parties' institutions were not drawn. Considerations of party interest influenced both government longterm policies and day to day

decisions. In these formative years statutory powers and public resources were seen as legitimate tools for advancing sectional interests. As a result of this diffusion of powers among the many ministries, public policy was not the product of conscious choice of ends and means but rather the aggregation of a variety of interests and viewpoints [49].

As for local authorities, there the degree of politicisation of the administration was even greater and lasted longer. As in the pre-State period, the local services provided by these authorities, together with their control powers, gave local political leaders and parties many opportunities to use legal and administrative powers for electoral gain. With the establishment of the sovereign State, the local authorities lost the significance of their previous role as a tier of Jewish self-government which had been recognised under the Mandate's legal-administrative system. The Jewish national institutions of the past, which practically formed and manned the newly established central government institutions, attempted to downgrade the importance of the local authorities. This was particularly successful during the first years of statehood, when local authorities lost their independent political strength. Certain local parties disappeared and their members were absorbed into more heterogenous national parties [50].

It should be noted that Mandatory attitudes of disrespect towards the local institutions also prevailed among government officials and affected central-local government relationships. The population in the new towns was not encouraged to develop local

political institutions but rather to depend on the support of the national parties and the central government institutions. Here again the arrogance of the veteran Ashkenazi establishment towards the Sephardi immigrants affected the relationship between the central government and the new towns [50A].

However, as a result of this situation in which the major national parties dominated both central and local government, many of the old conflicts disappeared. That is not to say that there was a consensus between the two, particularly on matters such as town and country planning. In such matters which concerned both central and local government there was often a difference of opinion resulting from the differences in national and local perspective. However, the pressure of local authorities, often through the national political parties, led to the supremacy of local over national interests. Gradually local authorities acquired enough political power to become an important partner with the central government in the administration of the urban and rural environment. The political relationship between these two branches of government strongly affected the organisational structure of the planning machinery, the formulation of planning policies and the way they were implemented. As for the decision making process, there was at least one characteristic which was shared by the two tiers of government, which was the over-politicisation of the administrative process. Factional considerations were common during the first years in both tiers, with only a difference in degree of impact. The rule of law was still to be affirmed in both the central and local government processes.

There has been since then a considerable depoliticisation of the civil service [51]. More and more attention was gradually given to the interests of the public in general, rather than to sectional or even personal interests. This process, however, took many years and the habits of the pre-State community have not been entirely eradicated.

Many factors contributed to this change in the bureaucratic pattern of behaviour. Of particular interest is the role played by the Israeli Supreme Court in its capacity as the High Court of Justice [52]. This Court, and in fact the judiciary as a whole, acquired a special apolitical status in Israel and commanded high moral authority.

In the legal sphere there was no previous communal traditions since the Jewish community was subjected to the general mandatory legal and judicial systems. Thus the Israeli Courts adopted from the start the British and American judicial norms and patterns which have been totally independent. Under the law, the High Court of Justice has been able to issue orders modelled after Common Law prerogative orders, to review the decisions and actions of central and local authorities and other bodies including individuals exercising statutory powers or enjoying public finance. It was its independence and special status that enabled the Supreme Court to resist deviations from the law on the part of the executive. Its firm imposition of the rule of law on administrative bodies as well as on

private individuals played an invaluable role in changing the pattern of administrative operation. This Court gained much appreciation in the eyes of the public as the defender of civil rights. Since Israel has no written constitution, this task was obviously of particular importance [53].

Besides the judicial control over the executive, another institution which has strongly affected the operation of the bureaucracy in Israel is that of State Comptroller. The latter exercises administrative control over central and local government agencies and many public bodies. The institution of a State Controller was established under a special law as early as 1949 [54]. The State Comptroller himself is appointed by the President on the recommendation of the Knesset. He is independent of the executive (whose operation he must inspect) and his accountability is to the Knesset.

Compared with its counterpart institution in Great Britain, the Israeli Comptroller has a much wider role. Besides carrying out financial supervision from the accounting point of view, he must also judge "whether the inspected bodies ... have operated economically, efficiently and in a morally irreproachable manner" [55]. Furthermore, he may examine "any such matter as he may deem necessary" [56].

The Comptroller's main tool for effective control is the publication of his annual report. He has almost no other administrative powers to bring about a change in the mode of

operation of the inspected bodies. The State Comptroller, however, like the High Court of Justice, has acquired a reputation for being apolitical and is greatly respected for his unbiased, though often strict, criticism. His reports thus provide invaluable information as to the way governmental institutions have been carrying out their tasks [57].

In the following description and analysis of the operation of planning administration, emphasis is placed on the findings, as well as the general impact, of the High Court of Justice's judgements and the State Comptroller's reports.

The geographical, social, ideological, political, economic and security factors mentioned above created the need for, or influenced, town and country planning. On the other hand, these pro-planning factors were offset by anti-planning forces which were, at the early stage of statehood, equally influential. Among the latter was the pressure of the time factor and the need to find immediate solutions to numerous problems, an inherited pre-State tradition of improvisation which was a common pattern in the operation of old Jewish communal institutions, an internal political hindrance to the formulation of longterm unpopular objectives which required immediate sacrifice for their achievement, and psychological attitudes of basic optimism which viewed predetermined plans as unnecessary. The result was a mingling of planning and improvisation in physical development as in many other areas of public life.

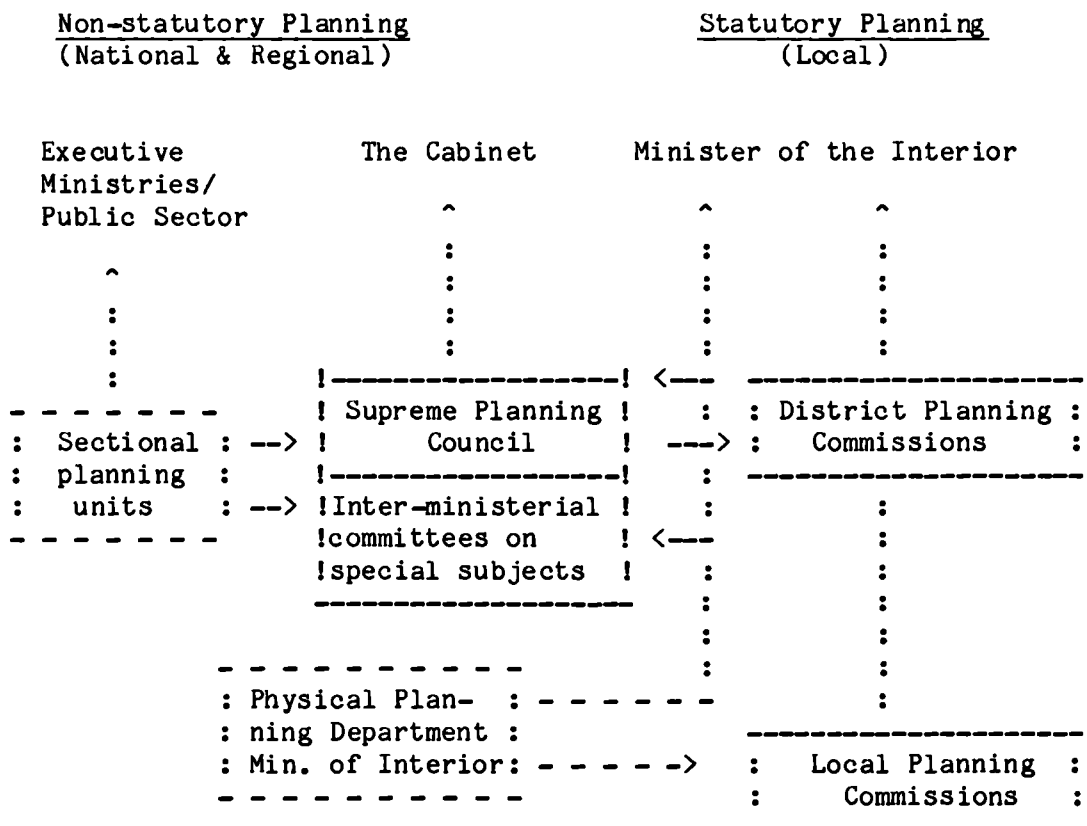
So far we have mentioned various aspects of the circumstances which prevailed in and since the early days of the State. We have also indicated some of their planning implications. Against this background we will proceed to deal with the planning system in its two branches, statutory and non-statutory. Both will be considered with regard to two periods: from 1948 to 1965 and from 1965 to the 1980's.

Obviously it is most important to analyse the organisational structure, the ideologies and policies in the implementation of the non-statutory branch in addition to those of the statutory one. This is so not only because they form part of the broad web of the Israeli planning system, but also because a full understanding of the statutory planning system requires not only an examination of what it contained but also of what it left to other planning mechanisms. However, it should be stressed that the term "non-statutory planning" in this part of the work has a different meaning that it had in Part I. Non-statutory planning in the Mandatory era referred to the non-institutional activities of the local communities as opposed to the official planning activities of the Mandatory government. In this part, the term is used to mean planning activities by public institutions, either under the general discretionary power of the executive or under different statutory functions, rather than the planning system as prescribed by, and executed under, the town planning legislation. This means that during the period discussed in this part, non-statutory planning still had some degree of formalism, though a greater degree of improvisation has been added to it.

CHAPTER 7. THE FIRST STAGE OF STATUTORY PLANNING 1948-1965

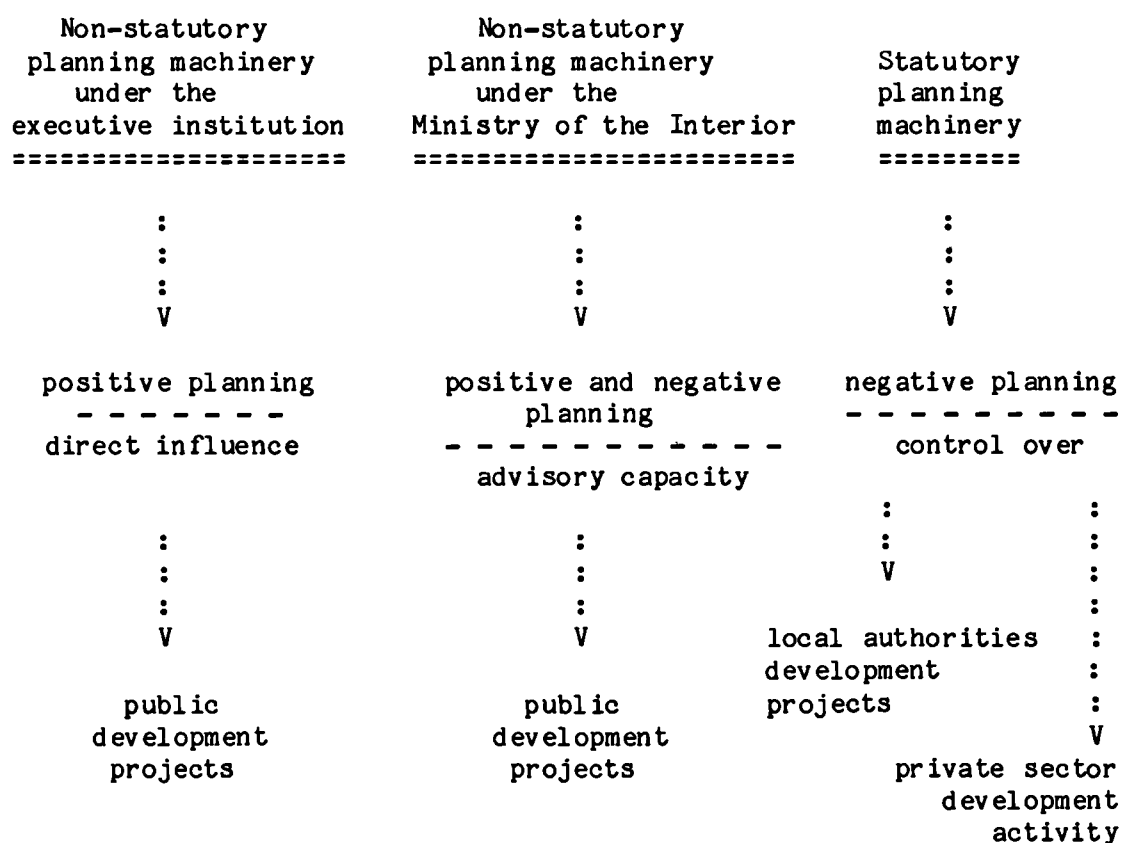
A. THE MACHINERY OF PLANNING

The years of the first stage were marked by the institutionalisation of the planning machinery. The basic structure of the planning organisation, including both statutory and non-statutory machineries, can be illustrated by a simple diagram, as follows:



The diagram shows three parallel hierarchies of planning institutions and the lines of communication between them. Of particular importance was the physical planning unit under the Ministry of the Interior which was established as the main governmental body for physical planning and played a special role in co-ordinating the different planning agencies.

The following diagram illustrates additional links established between the planning machinery and development agencies:



The machinery of planning and its evolution were, to a great extent, the result of the particular political circumstances prevailing in the early days of statehood; they were also strongly influenced by the Mandatory legal legacy. This historical evolution explains to a great degree the characteristics of the planning institutions and the substance of the entire system.

1. Non-Statutory Planning Machinery

The preparations for the establishment of the administration at central government level began a short while before the Declaration of Independence [1]. A "Proposal for the Structure of Departments Establishments and their Budgets" was drafted; this included 13 ministries, a number of which corresponded to the number of members in the Provisional Cabinet. The proposal did not include a separate ministry for planning, but a ministry which was to deal, amongst other subjects, with town and country planning.

A Ministry of Labour and Construction was established and entrusted to the left-wing Mapam party. It included housing, public works, physical planning and other minor units concerned with land development. Due to his planning responsibilities the Minister of Labour was put in charge of implementing the Town Planning Ordinances [2].

The first Minister of Labour, Mr. Bentov, was very sympathetic towards planning and his encouragement was a great help in the establishment of a planning department [3]. The fact that the Minister was a member of the Mapam party and not the leading party in the Jewish Agency, Mapai, meant that the newly established organization was independent of the Technical Department of the Jewish Agency and could bring in new people from outside the party with fresh ideas and planning perceptions, including those not previously accepted by the Jewish national institutions.

However, the affiliation of planning to a multi-function ministry has not changed since 1948. It reflects, to some extent, the negative attitude of many politicians towards overall long-term planning and the prevailing spirit of improvisation in favour of short-term requirements. This structure, in turn, undermined the authority of the planning department which depended on the administrative importance and political status of the ministry to which it was attached. One positive result of this organisational affiliation, though, was that it ensured close contact between the Planning department and the Housing and Public Works department which ensured some consistency between planning and implementation. Given the fact that the government-public sector was very active in the building industry and the development market, particularly during the formative years of the State, such a link was obviously desirable. It did not, however, last very long.

This planning body consisted of architects and engineers, and was mainly concerned with the physical and aesthetic aspects of the environment. It was to serve governmental bodies in the preparation of plans for new settlements and neighbourhoods, dwelling house constructions and other land developments. It was also to help and ensure that local authorities and district administrations carry out their statutory planning duties.

The allocation of functions implies that a broader scope of comprehensive national and regional planning was beyond the scope of this Physical Planning Department and was to be the task of the government as a whole. However, from early days the planners themselves adopted a broad line of planning activity; this meant both regulative and positive centralised planning at national and regional levels. Though their pressure to establish an independent Town Planning Ministry did not bear fruit, the professionals - supported by the first Minister - played an important role in the increasing importance attached to systematic planning by the decision makers and the general public [4].

On the other hand, their emphasis on physical-aesthetical planning, which was rooted in their training and experience, limited the scope of planning and was to have long-term effects. It is significant that the name "Physical Planning Department" has remained until this very day.

Soon after the establishment of the State and the formation of the first elected institutions in March 1949, planning machinery was reorganised and the governmental "Physical Planning Department" was divided between two ministries. The Ministry of the Interior, responsible for local authorities, was to be responsible for the implementation of local detailed planning under the Town Planning Law and received the current planning division. The tasks of long-term national and regional planning were vested in the Prime Minister's office where the physical planning unit was to work in co-operation with a national economic planning unit, also established at the same time in the Prime Minister's office [5].

Since non-statutory national and regional plans were to be filled in by local plans, some link was required at the organisational level. For this purpose the Prime Minister was given statutory powers relating to the declaration of local planning areas and the approval of local outline schemes [6]. From a legal perspective this was an extraordinary situation whereby two ministers were given responsibilities for different aspects of the same matter. The distinction between these two parts was rather artificial and bound to create difficulties. Furthermore, the administrative structure of the planning units created a functional anomaly by separating the machinery which dealt with local statutory planning from that of the broader national and regional planning. In practice, however, the personal links between the two divisions of physical planning machinery were maintained, though this did not always secure the consistency of statutory planning with non-statutory planning.

The major innovation of this reorganisation was the attempt to create a body for integrated national planning under the auspices of the highest political status, the Prime Minister. This can be seen as an attempt to move from a limited, sectional and technical service, as physical planning was then conceived, towards a more comprehensive approach of integrated planning as an important tool of government. In reality this attempt failed. The Prime Minister's office was devoted totally to security and foreign affairs and put aside internal issues such as national planning. Hence this promising organisational structure did not last long and was changed before it produced any significant results [7].

By 1951 the two parts of the previous Physical Planning Department, together with the legal responsibilities for implementing the law, were reunited, this time under the Ministry of the Interior [8]. This has remained the situation ever since. The department worked on both statutory schemes (which were regulatory in nature and locally oriented) and on non-statutory plans (national and regional).

An evaluation of the physical planning machinery and its weight in the Israeli public administration requires a glimpse into the political arena. The Ministry of the Interior has been, since 1948, in the hands of a junior partner of the coalition cabinet. It changed hands several times, though it was for the most of this stage under a minister from the National Religious Party (NRP). The results of this were: (1) the political status of this ministry (including the

planning unit) was rather low; (2) the political changes hampered the formulation and implementation of a consistent planning policy; (3) the issue of physical planning within the ministry was given little attention due to lack of interest on the part of the NRP; (4) the Physical Planning Department itself was alien to the ministry since it could hardly be manned on a basis of party membership.

The political situation also affected the district administration. The Mandatory district commissioners were responsible for the co-ordination of all government activities in their respective districts; the Israeli ones were merely representatives of the Ministry of the Interior. They had no authority over the affairs of other ministries [9] and thus with the shrinking power of the district commissioners, the status of the district planning commissions under their chairmanship also suffered. This was particularly harmful since the bulk of governmental development was exempted by law from statutory development control [10].

Although the responsibility for physical planning lay with the NRP, the most important operating ministries and agencies were controlled by the Labour Party. Inter-ministerial rivalry and competition often took place which was also reflected in the establishment by many governmental bodies of their own sectorial planning units. Ministries with interest in physical development such as those of Housing, Labour, Transport, Commerce and Industry, Agriculture, and Defence, and public bodies such as the Israel Land

Authority and the Settlement Department of the Jewish Agency were engaged in sectorial planning, parallel to that of the main governmental planning unit under the Ministry of the Interior [11].

A spirit of activism, rooted in socialist perceptions, was the cause of the governmental and public sectors high involvement in physical development. Yet political gain and matters of status led to the uncompromising stand taken by these agents. For example, the responsibility for the main physical planning machinery was demanded by executive ministries such as the Ministry of Labour and the Ministry of Housing, but they encountered strong resistance from the Ministry of the Interior. The argument was of interest in itself. It stressed the fact that because of the direct involvement of these ministries in development activities they were, to some extent, interested parties and thus lacked the total impartiality of the Ministry of the Interior [12]. For reasons of political arrangement the Ministry of the Interior eventually obtained overall responsibility for physical planning.

A "Supreme Planning Council" was established to co-ordinate the planning products of all these bodies and to formulate an integrated national plan [13]. It began functioning early in 1951 as a non-statutory inter-ministerial body and consisted of representatives of the various ministries and public institutions under the chairmanship of the Director of the Physical Planning Department. Its power was affected, however, by the fact that it was regarded as part of the Ministry of the Interior.

Further inter-ministerial collaboration was attempted in the early 1960's when the Physical Planning Department worked together with the then newly established Economic Planning Board of the Ministry of Finance on a national master plan [14].

The last non-statutory body for planning was a ministerial committee headed by the Prime Minister which was established in 1963. It was set up to deal with the most important planning issue, the dispersion of the population. This highly ranking committee was set up because of the importance of the subject and the failure of lower ranking bodies to create integrated governmental strategies [15].

The problem of administrative co-ordination was given much attention during this stage. As one of the key men in the Physical Planning Department wrote: "At first national planning frequently confined itself to co-ordinating and combining the functional requirements of various sectors on the physical level. It was the beginning difficult to achieve full co-ordination between the activities of the various Government offices and public agencies. An additional obstacle to national planning was the lack of long-term planning; planners had to rely on hypothesis rather than on well-defined and well-formulated directives" [16].

Despite these attempts to integrate inter-ministerial planning, the reality of a separation between the governmental planning machinery and its executive bodies, together with the absence of an integrated body for organised urban development, were most striking.

The process of development of new towns was named by one writer as the "feudal's fight" [17]. It can be illustrated by a number of examples: Kiryat-Gat was planned and constructed as part of a regional planning project by the Ministry of Agriculture and the Jewish Agency; Upper-Nazareth and Mitzpe-Ramon were established under the auspices of the Ministry of Defence; Eilat was developed by an inter-ministerial body; Arad was planned and built by the Ministry of Labour and Karmiel by the Ministry of Housing; and for the planning and building of Ashdod a public company was established.

Furthermore, in every new town many other bodies were involved [18]. The financial resources came from various budgets after a long process of administrative bargaining. The public land required for these developments necessitated an arrangement with the Jewish Agency and, since the 1960's, with a governmental body responsible for all public land. The actual building projects were the responsibility of the Ministries of Housing and Labour. With such a dispersal of powers, responsibilities and resources, it is somewhat surprising that 30 new towns were eventually created.

These organisational drawbacks were crucial to effective planning. They were, among other things, an expression of anti-planning and particularly anti-urban development tendencies which had an ideological basis [19]. In contrast the rural sector developed a comprehensive system to deal with the many aspects of the physical, social and economic life of agricultural settlements. The distribution of responsibilities for urban planning and the carrying out of urban development by various bodies without arriving at a

comprehensive implementation strategy had far-reaching effects, particularly on the development of new towns. Since the effectiveness of planning depended not only on the preparation of plans but also on the ability to persuade the heads of the relevant ministries to mobilise resources and to carry out development in accordance with the plans, the success of the planning machinery under the Ministry of the Interior was very limited indeed, considering the political situation. Organisational problems were not, however, confined to that Ministry, since even after the ministerial committee was established and the government as a whole approved a set of recommendations regarding the dispersion of population, the implementation of these recommendations remained very fragmentary [20].

The major reform of planning machinery did not come until the introduction of new town planning legislation in 1965. This will be discussed below with regard to the second stage of the Israeli planning system.

When the evolution of planning machinery is compared with the evolution of planning organisation in England during the 1940's and 1950's, the similarities are striking [23]. The emergence of a new town and country planning section in the Office (later Ministry) of Works; the dispute over planning responsibilities between the Ministry of Works and Building and the Ministry of Health; the settlement of the dispute by a separation between the responsibilities for long-term planning (given to the former) and statutory planning (retained by the latter); the unclear

organisational boundaries between physical planning functions and social and economic planning; the creation of the Ministry for Town and Country Planning in 1943 independent of that of Works so that planning authorities would appear to be entirely impartial in their judgement as to the right use of land; and the reformed structure which again in 1951 vested planning with a multi-functional Ministry (the Ministry of Local Governmental Planning and later the Ministry of Housing and Local Government) which remained in charge of planning for a very long period until 1969; the separation between planning machinery and implementation agents in terms of industrial location, agricultural use, health and labour; the ultimate result that although there was a ministry responsible for planning the formulation of a comprehensive planning policy and its implementation were in fact the responsibility of the Cabinet as a whole [21].

The similarities between the two countries proves the universality of the complexity involved in fitting planning responsibilities into the organisation of government. The relevant organisational problems of institutions, powers and responsibilities for statutory and non-statutory town and country planning, development control, socio-economic planning, positive implementation and above all of co-ordination between all the relevant bodies, were raised in both systems. The range of possible solutions was found to be almost unlimited. Nonetheless the actual decision as to the structure of planning machinery was heavily influenced by the different political perspective, not only of the two countries but also within each country at different times.

2. The Statutory Planning Machinery

The statutory planning machinery was re-established soon after the declaration of the State. During the first period this machinery not only followed the Mandatory organisational pattern but also consisted, to a great extent, of the personnel previously staffing the statutory planning commissions, largely because the planning commissions had included many Jewish officials. From the structural and personnel aspects there was a great deal of continuity in the planning decision making bodies which had a conservative affect on the functioning and planning products of the statutory machinery.

The hierarchy of the three-tier structure was maintained. At the highest planning level the powers of the Mandatory High Commissioner were vested, for most of this stage, in the Ministry of the Interior, aided by the Physical Planning Department in that ministry. Since this department also dealt with broad planning aspects, the Minister's decision making power could, in principle, be used to make local plans compatible with national and regional policies. In reality the co-ordination between non-statutory and statutory planning through the Minister's decisions was very limited.

The second (and most important) level of planning organisation was the District Planning Commission. Since the Mandatory decentralised approach was maintained, district commissions were re-established in every administrative district [22]. From 1953 onwards there were six district commissions in Israel [23]. In every district, the Planning Department established a bureau to assist district and local commissions. These bureaus were also intended to add to the consistency of statutory planning with national and regional planning. Despite these attempts, the problem of inconsistency between the two remained unsolved.

As described in Part I, the functions of the district commissions were threefold, relating to legislation, administration and adjudication. Yet the real task was to control the planning process at the local level. District commissions mainly considered planning proposals submitted by local authorities and private individuals, rather than being responsible for the actual preparation of schemes, and their methods were highly criticised at this stage. Such criticism of the planning administration was very similar to the criticism voiced in England [24]. In both countries the planning institutions were said to be concentrating on insignificant local issues of land use rather than on an integrated regional planning policy. The decision making process was cumbersome and overloaded. Delays brought planning into disrepute and since it required the administration several years to consider important schemes, by the time they were approved they were often out of date.

This criticism was valid in Israel not only during the first stage but during the second as well.

At the bottom of the hierarchy were the local commissions. Their number grew rapidly with the development of new urban and rural settlements and the establishment of new local government institutions. The boundaries of the local planning areas did not follow the administrative sub-district division but corresponded more to local government boundaries. This resulted in an abundance of planning commissions, each responsible for a very small territory and population. By 1965 there were no less than sixty-six local commissions [25]. Such a fragmented machinery, the result of political pressure for local self-assertion, created an irrational structure and malfunctioning machinery.

By contrast in England and Wales there were only 145 planning authorities in 1962, of which 9 had a population of one million and only five a population of less than 600,000 [26]. Yet even in England the system was criticised on the grounds that the smaller authorities were poorly staffed and badly structured, thus unable to carry out planning properly [27]. Despite the criticism, however, only a few adjustments were made in England during these years [28]. It was not until the early 1970's that a major reform was introduced.

A much more compact organisation than that which existed in Israel could have been structured if the plan [29] which was prepared as early as 1951 would have been followed. Under that plan, Israel's territory was seen as having four main urban zones of influence, corresponding to the main cities: northern zone centred around Haifa; central zone centred around Tel Aviv; Jerusalem zone centred around the capital; and southern zone centred around Beer Sheba. These zones could have been applied to the district level of the planning machinery. Further, the plan proposed a sub-division of the country's territory into 24 planning regions which could, at a later stage, be reduced to 16. This sub-division could have been applied to the local level of the planning machinery. This new map-based division was aimed at serving a balanced development of all parts of the country and of supporting a policy of integrated urban and rural development by providing a common platform for planning. Given the ideological and political differences which prevented collaboration in physical development in the past, the new structure was promising.

In fact the statutory planning organisation did not follow the concepts proposed in this plan. The course pursued was strongly affected by the political and administrative relationship of central and local government which, in turn, led to the gap between national and regional non-statutory planning and the locally oriented statutory planning.

The fragmented division of local commissions led to financial difficulties and inefficiency in the implementation of their town planning functions, particularly noticable in the slow pace of scheme making [30].

Given the highly politicised local authorities, the exercise of development control by local commissions (particularly when these were identical to the municipal councils) provides a striking example of financial and political utilisation of administrative power. The main financial incentive for the manipulation of planning powers resulted from the Mandatory legacy which ensured that betterment tax form part of the local authorities' budget. The commissions were often tempted to increase building densities (as demanded by private developers) for the resulting increase in the rate of the tax.

In addition, the stringent provisions regarding control over development, by which local commissions' permission was required for every minor building operation or change of use, provided the opportunity for social-political control over the commissions' clientele. Some authorities went further and used their development control powers as a source of income by imposing permit fees without any legal basis [31].

The main defect in the local authorities' operation was in the enforcement of the law where again political considerations induced both action and inaction in taking steps against unauthorised building.

3. Representative Democracy and the Statutory Planning Machinery

The Reform in District Commissions - the 1954 Amendment [32]

In 1954 the composition of the district planning commission was changed. Three significant points are worth stressing here. Firstly, the reform expressed some change in the relationship between central and local government and between government administrators and locally elected politicians. These changes resulted from the raising of the status of the local authorities within the planning machinery. Secondly, this reform also related to the inter-governmental relations regarding the activity of town and country planning; it was directed at improving the mode of operation of the government/public sector through the extension of ministerial representation in district commissions. Thirdly, the organisational reform affected the concept of planning and the scope of issues it covered. These points require some elaboration which will be made while describing the actual provisions of the amending law.

The 1954 reform changed, to some extent, the hierarchal structure of planning institutions. The situation whereby the central government, at the top level, had total control over the planning activities of local government, was changed to allow a more balanced equilibrium between central and local government. The membership of district commissions was expanded to include representatives of both central and local authorities. Each commission was to consist of

thirteen members rather than five [33], though the majority still consisted of central government appointed officials. This majority of 9 out of 13 was made up by the district commissioner as chairman, a professional town planner, and officials of the Ministries of Defence, Finance, Agriculture, Transport, Health, Labour and Justice. The remaining four new members were appointees of the Minister of the Interior, chosen from a list of candidates recommended by the various local authorities within each district [34]. The only legal limitation to these appointees was that candidates had to be neither central nor local government employees [35]. This, in practice, meant that unpaid local elected members could be appointed, representing the local people in the planning process. In other words, the concept of representative democracy was given substantial expression at the expense of the appointed administrators.

The law also prescribed that the Mandatory practice of inviting a Town Engineer to a district commission's sessions whenever issues which might affect the relevant town were discussed should be a binding provision; such invitation was made compulsory rather than discretionary. The law also conferred upon the engineer the right to be heard before a decision was made by the commission, adding to the participation of the local institutions in the planning process [36].

To understand the full significance of the 1954 provisions, it should be remembered that local authorities had demanded a greater share in the planning decision making process ever since the enactment of the first Ordinance in 1921 [37]. The denial by the

Mandatory government of this participation was continued after the establishment of the State of Israel; it was not until political changes in the coalition government and the appointment of ex-Mayor of Tel Aviv, Mr. Israel Rokach, as Minister of the Interior, that this reform was introduced.

The 1954 reform had a marked psychological effect on the operation of the planning machinery. The central government, and particularly the administrators, could no longer work behind closed doors and thus lost the administrative freedom which had led to lack of effective control by both the local people and the general public. The new participation of "outsiders" made the decision making process, from the government's point of view, a more vulnerable affair. It is significant that together with the expansion of the commissions' membership, new provisions regarding standards of conduct were introduced. These provisions [38] prohibited the participation in the commissions' sessions of any members who had an interest in any matter under discussion. In addition, an obligation to keep confidential matters discussed by the commission could be imposed on the members.

It can be argued that the inclusion of these provisions was indeed overdue and was done on the occasion of the amendment of the law. It can also be said that the extension of the membership of the commissions made such rules of conduct necessary. I would suggest that the inclusion of these provisions had more to do with the change in the customary pattern of operation of the planning administration than simply with the objective needs of imposing desired standards of

behaviour on public officials.

The 1954 reform was a move from the old secretive style of government towards a more corporate bureaucracy and open government. The new integrated central-local government body led to a change in the balance of planning powers. If in the past the operation of planning administration had been described as central government "versus" local authorities and local people, this reform can be described as central-local government "versus" local people. This broader governmental organisation formulated a new modus vivendi for its participants, giving a greater share in the decision making process to local institutions which became partners (albeit junior partners) in the administration. This arrangement still deprived the non-established public and the private property sector from any real participation in the planning process. This may be seen as a statutory expression of the supremacy of representative democracy over public participation and individualism.

It should be pointed out that the change in the status of local institutions within the planning organisation was not made by allocating greater powers to local planning commissions, but resulted from the inclusion of a few local representatives in the main decision making bodies; i.e. district commissions. The local planning commissions still retained only an advisory role to the other planning institutions.

The 1954 reform established a common platform with free communication lines between the various governmental ministries interested in land development. This platform differed from the Supreme Planning Council in its statutory basis and allowed a more practical and effective process for the making of binding planning decisions. Given the problems of inter-ministerial rivalry and the political and functional conflicts regarding the respective roles of these different agencies, this could have been a major step towards integrated governmental policy of land development in the respective districts. The broad composition could have been utilised to improve the consistency between the non-statutory sectional planning policies of the various bodies and the statutory planning product. It could have narrowed the gap between statutory schemes and actual governmental implementation which took place in every district. It could also have helped to realise the national plans which were formulated by the Supreme Planning Council at the district and local level, since the same ministries participated in both planning institutions.

However, despite the potential concealed in this structure, very little was done in these areas. The ministries took their membership as a matter of status, administrative pride and even more as a source of political influence on the commissions' clientele. For their own development projects they generally accepted the decisions of the commissions only as long as they fitted with their own policies. They were able to do this because they were not subject to statutory development control in their development activities.

Infighting between the different bodies brought statutory policy making virtually to a standstill and crucial decisions were postponed.

The third aspect of the amendment of the law in 1954 was a result of the two effects mentioned above, reflecting the organisational structure on the product of the machinery. Since different bodies, each concerned with a different facet of urban and rural planning and development, were cast together in every district commission, the scope of the subject matter was significantly broadened. Aspects of physical, economic, social, political and security considerations were likely to be involved, even though the planning product was expressed in the traditional regulatory form of physical land use. Similarly, since local representatives now participated in these decision making bodies together with central government members, preferences of the local public and of the local institutions which represented that public, in addition to the views of administrators and professional planners, were likely to affect the discussions. Planning became less imposed from above and more a combination of views of the two government levels. On the other hand, the growing power of the local representatives made it more difficult for the government to impose national policies, which again led to a gap between statutory and non-statutory planning.

From a general perspective, the 1954 reform introduced no more than a limited change in the overall structure of the planning machinery which continued to operate in the same manner until the new planning law of 1965.

The main problems of planning machinery were: (1) the plethora of planning institutions without any one recognised authority for making final decisions; (2) the lack of co-ordination between the many governmental public planning agencies; (3) the lack of administrative teeth and political backing and influence over planning implementation of the Physical Planning Department of the Ministry of Interior; (4) the lack of influence of the governmental planning institutions over the statutory planning machinery, particularly at the local level; and (5) the over-politicisation in the local planning decision making process.

Problems of unco-ordinated activities between the various parts of the executive power, of inter-departmental rivalry and of overlapping authority were not limited to the development of new or old towns, nor to Israel. The overcoming of such problems is one of the most difficult tasks of any government, and the problem grows with the increase in new areas of governmental involvement in a welfare state. In England, the tension between the executive departments and the Ministry of Housing and local government, and between the planning institutions dealing with economic planning, transport planning, urban and regional planning were by no means less than in Israel [39]. In the second part of this work we shall see how these problems were dealt with in both countries. In the case of Israeli town and country planning, the unco-ordinated activities of the governmental/public bodies were particularly harmful; firstly because of the big share of the public sector in the building activities and the development market; secondly because of the

dependence of the new immigrants on the absorption machinery which led to a paternalistic attitude towards the newcomers; thirdly because of the conflicting ideologies as to the ideal form of human habitation (urban versus rural) which affected the approaches taken by different bodies in land development; and fourthly because of the political struggle between the many bodies for actual resources and practical powers and responsibilities to achieve their different pragmatic goals.

By the early sixties it was realised that the absence of a recognised body with final authority in planning and implementation was a major drawback of the system. Further, in view of the dynamic changes experienced in the country during these years, the statutory planning organisation was in a state of stagnation, as were many other administrative institutions. The gap between the existing structure and a desirable functional machinery was filled by informal arrangements, which often ignored the rigid planning rules as set up in highly detailed statutory plans or even in the law itself. The administrative pattern had the character of anomie which, though it was not rooted in the whole system but was merely a means of providing flexibility and enabling the implementation of development projects, did deviate from legal norms and the rule of law, requiring the intervention of the High Court of Justice and the State Comptroller.

B. POLICIES, PLANS AND PRACTICE DURING THE FIRST STAGE

Israel's planning policies were rooted in the pre-State legacy and influenced by contemporary values, ideologies and perceptions of prevailing conditions. These policies are discussed here in relation to both statutory and non-statutory plans. The non-statutory branch was largely a positive planning system in the sense that it was concerned with actual development projects carried out by the government and the public sector at national and regional levels. It was designed as a macro-planning system with a comprehensive outlook [40]. In parallel, the statutory branch was traditionally conservative, dealing with regulative micro-planning at the local level. Together these two branches constituted multi-level planning at national, regional and local levels. This has been characteristic of the Israeli planning system since the early days of Statehood. This systematic approach, from the most general to particular, reflected the Zionist enthusiasm for building a new independent State.

From the very start and despite an atmosphere of crisis, transition and rapid change, the government clearly articulated its planning policies. This contributed to the institutionalisation of the planning system during the first stage.

The major planning policies of Israel were described by the Minister of the Interior in the Knesset [41]. They can be outlined as follows:

1. Location of the population throughout the country while giving priority to absorption of immigrants in the sparsely populated areas of the Negev and the Galilee.
2. Location of industry, development of communications networks (including air and sea ports) and a water supply grid in accordance with the needs of the population dispersal policy and at the prescribed stages of priority.
3. Consolidation and extension of the rural settlements.
4. Protection of agricultural land as a national resource and prevention of urban sprawl.
5. Crystallisation of urban development while tending to economise on land, costs and services.
6. Prevention of speculative trade in land by integrating planning and municipal physical policies.
7. Rehabilitation of slums and inner city areas.

8. Guiding physical development in Arab villages while considering their special character.
9. Conservation of sites of architectural, historical, religious and national importance.
10. Development of national parks and natural reserves.

These policies are elaborated below while describing the preparation of plans during this first stage.

1. National Policy for the Dispersion of the Population

As early as 1949, on the occasion of the establishment of the first elected Knesset and Government, Israel's planning and development tasks were outlined, formally incorporated in the "Basic Principles of the Government Programme", and approved by the Knesset [42].

The government declared that it would adopt a four-year development plan whose general tasks were to double the country's population by means of mass immigration and to achieve intensive development. For such development, social, economic and physical objectives were defined. The most relevant here was the first paragraph which stated the objective of "a rapid and balanced settlement of the underpopulated areas of the country and avoidance

of excessive urban concentration" [43]. Other paragraphs emphasised the development of particular areas such as Jerusalem and its corridor, the Negev, and several other towns in the north of the country [44]. The government also mentioned developments tasks relating to housing, employment, agriculture, afforestation, the setting up of a communications network, industry and tourism. Emphasis should be placed on the terms "balanced settlement" on the one hand and "excessive urban concentration" on the other. The interpretation of these was crucial to the formulation of the country's main planning policy; i.e. dispersion of population. This was done in a series of non-statutory national plans which were prepared in 1949 and in later years.

The first plan (1949) [45] was to cater for a population of two million. It was a preliminary plan for the distribution of the population and industry, location of housing projects on the basis of that distribution, setting up of a communications network and establishment of national parks. This first national master plan advocated two far reaching principles which originated in pre-State planning conceptions among Jewish planners. Firstly, Tischler's regional-focal approach was adopted [46]; thus planning regions were used as territorial units of certain size and population which provided a pattern for overall national planning. Secondly, Brutzkus' argument for the creation of a hierarchy of settlements through the establishment of regional centres and small and medium sized towns was accepted [47]. The main drawback of this plan, however, was that it was prepared before a proper study of the physical, social and economic conditions had been completed.

By 1951-52 the national plan was given a more articulate and elaborate form [48], though its underlying principles remained the same. It set the number of 2,650,000 people as a target for which it strived to plan. Of this number, 22.6% were to live in agricultural settlements while the vast majority were to be guided to new urban settlements away from the big cities.

The national plan consisted of a set of maps and explanatory statement. It provided the framework for more detailed regional and local planning. It contained a numerical population target for each of the regional units which in turn were broken down into estimates for the growth of individual urban and rural settlements [49].

The policy of population dispersal, pursued in the 1951 and following plans, was basically an adaptation of the Barlow Report of 1939 [50]. This policy was so well received by administrators, planners and politicians that it became the theme of the entire planning system in Israel. The circumstances prevailing in Israel were to some extent similar to those during the post-war years in Britain. As pointed out in the Barlow Report, the rapid growth of London was strategically dangerous and had social and economic disadvantages. This was clearly also the case with Tel Aviv and its surrounding towns. Particularly in the context of the War of Independence, the population dispersal policy was seen in a broad sense as one of the primary objectives of national security. Thus in principle it enjoyed a wide consensus and its implementation led to some good results.

Geographical Distribution of Population [52]

Administrative district	<u>1948</u>		<u>1965</u>	
	Total pop.	Jewish pop.	Total pop.	Jewish pop.
<u>Central Districts</u>				
Tel Aviv	35.7%	43.2%	30.6%	34.3%
Haifa	20.5%	21.1%	16.5%	16.1%
Central	14.3%	15.2%	18.2%	19.1%
	-----	-----	-----	-----
	70.5%	79.5%	65.3%	69.5%
<u>Peripheral Districts</u>				
Jerusalem	10.2%	12.0%	8.5%	9.4%
Northern	18.8%	7.6%	15.7%	10.2%
Southern	2.5%	0.9%	10.5%	10.9%
	-----	-----	-----	-----
	29.5%	20.5%	34.7%	30.5%

However, as the above table shows, the percentage in population of the coastal districts of Tel Aviv and Haifa fell to some extent, while the southern and northern districts gained in Jewish population. The population in the district of Jerusalem fell while that of the central district grew. These tendencies did not follow - indeed to some extent contradicted - the intentions of the planners. The overall picture by 1966 was a far from balanced development of the country as a whole.

The effect of the above-mentioned plans on the actual dispersal of population is difficult to assess since its implementation was not in the hands of the planners but depended on the goodwill of the economic and executive ministries and public bodies. Various interpretations of this policy were given by these different institutions; the result was a mosaic of opinion, often without correlation to physical development.

Governmental activities of the first few years, when closely examined, give the impression becomes clear that the population dispersal became a goal in itself, even transcending the welfare of the settlers. The policy exercised by the authorities was a major tool for social and political control over the new settlers. New immigrants rather than the veteran population constituted the main human source for achieving the dispersal policy. They were guided from the centre to the more remote new settlements where they were supplied with basic necessities.

Although economic considerations at the initial stage prevented people from moving back to the central towns, later a new process of migration from the periphery to the centre took place. This left the remote districts at a rather low level of social, economic and physical development. In the atmosphere of collectivism and extensive governmental intervention, a suggestion was made in planning circles to impose legal restrictions on the freedom of internal migration, but this was quickly rejected on the grounds that it was inconsistent with the democracy of the State. Though administrative attempts were

made to restrict the growth of Tel Aviv and its metropolitan surroundings, these failed due to a lack of political determination to resist the pressure for development in these areas. For the same reason even the statutory machinery of development control was of no help.

In 1965 the government approved a recommendation "to use town planning schemes, staggered in 5-years stages, as an instrument to control and regulate urban and industrial development" [53]. In essence this meant a new attempt to halt further concentration in the central areas, particularly in Tel Aviv and Haifa, by restrictions imposed through statutory schemes. Since the link between national and regional policies and local schemes was almost non-existent before 1965, little use, if any, was made of the existing legal tools in pursuing the policy of population dispersal. Instead the general administrative means and discretion to run the country's domestic affairs were considered sufficient for the task.

2. Regionalist Approach and Hierarchy of Settlements

Coupled with the primary policy was a regionalist approach which advocated the creation of a structure of settlements according to rank [54]. This was aimed at replacing the existing primary structure in which settlements were generally divided between the few big cities and a large number of small villages. The national master plan of 1951 [55] prescribed five different types of settlement to be developed throughout the country. These ranged from small agricultural settlements of 500 people through rural service centres

of about 2,000 people, urban-rural centres of 6,000-12,000, medium sized towns of 20,000-60,000 and ultimately to the big cities of over 100,000.

Under the plan, 45% of the total urban population was to live in big three cities while 55% was to live in medium and small towns throughout the country. This proposed structure followed the thoughts in the 1920's of Lewis Mumford [56], Christaller's "central places theory" [57] and others. This approach, rooted in European regional practice, emphasised the ratio between the size of a settlement and the area for which it can provide services. This was adapted to local conditions in Israel, despite the view of many that the intermediate ranks of relatively small service centres had no place in such a compact country as Israel [58].

Under the national plan, every region was to include a regional (new) town, a few urban rural centres, several rural service areas and many small villages. The new towns were to be alternatives to the three main cities, thus breaking the direct economic, cultural and service links between the single villages and the big city.

The national plan prescribed a new geographical division of the country into planning regions. This division was of substantive and organisational significance. As pointed out, the territory of Israel was divided into 24 regions and classified under 4 major zones. This division was based primarily on the agricultural factor, to which social, historical, administrative and communication factors were added. The relatively limited number of regions corresponded to the

requirements of a more modern planning system. The plan strove to create self-contained regions in terms of demography, economic opportunity, social and cultural standards, and government administrative institutions.

More important was that the regionalist approach advocated harmony between town and country life or, as Professor Hashimshony described it, a "feeling of solidarity between farmer and town dweller" [59], which he viewed as characteristic of an era of national stress. The atmosphere of crisis in Israel during the harsh days of the War of Independence gave rise to a strong sense of social solidarity, of which this integrated planning approach was a result.

Professor Cadman similarly describes the post-War English planning system as a reflection of the conviction that "the sense of collective goodwill that lay behind the war effort would surely spill over into peacetime" [60]. The combined effort in the rebuilding of Britain was to be shared by the public and private sector. As he explains, owing to political and economic influence this envisaged co-operation between the two sectors turned out to be a conflict and subsequently became a bargaining process between the public and private sectors.

In Israel, however, that apparent integration was conceptually dominated by a rural ideology, particularly evident in the most famous regional planning project of the "Lachish Region" north of the Negev [61]. This project was carried out after 1954-55 under the Ministry of Agriculture and the Jewish Agency. It involved a

composite regional plan of about 30 small villages, 6 rural service centres and one regional town. Though ostensibly it followed the urban-rural integrated concept, a close look at the planned function of the town reveals the dominance of the rural ideology. The town, called Kiryat Gat, was rightly described as a "rural town": it was planned to live for and from the surrounding agricultural settlements rather than as a town in its own right. Its function as a centre for the major processing plants of the agricultural produce of the region was given the most emphasis, while other functions such as a centre for administrative, commercial and cultural services received only secondary attention.

Similarly, rural ideology dominated the intermediate levels in the hierarchical settlement concept. The planning of the small rural-urban centres and the regional towns could be classified as ruralisation of urban life. Their planned function was similar to that of Kiryat Gat; namely to serve the hinterland and thus be totally dependent on the rural sector.

Even the internal planned structure of the new towns combined rural villages and urban settlements. Emphasis was placed on decentralisation and low density, separate neighbourhood units, green belts, open spaces, large plots of land and even agricultural farms as an auxiliary source of employment [62]. These components were adopted from the British concept of "garden cities". Howard's ideas fitted in well with the rural ideology prevailing at that time. However, this ideological basis was not sufficient to ensure planning success due to the fundamental differences in the geographical,

social and economic circumstances between Israel in the early fifties and Europe of the 19th century. The new towns lacked the intensive and dynamic style which characterises urban life and were thus aptly named by one writer as "semi-agricultural hybrids". The dispersion of buildings proved very costly in terms of construction and maintenance; green areas required large investment and large quantities of water which were unavailable, and the distances between dwelling houses, public centres and place of work proved very inconvenient [63].

As a result of these early years, there was a significant change in policy towards a crystallisation of the various parts into more coherent towns, intensification of land use through higher densities and less open spaces, together with more heterogenous housing aimed at achieving social integration. Neighbourhoods were populated on a basis of profession and place of work rather than on the immigrants' country of origin.

3. New Towns

As for the implementation of the hierarchical structure of settlements and the policy of regionalism, about thirty regional towns were established during this stage [64]. Some were entirely new, others were based on old urban nuclei, and a few emerged from the temporary immigration camps and Ma'aborot.

When the new towns are looked at as components of the regional policy it can be seen that the results were not encouraging. The

rural sector continued to develop its settlements independently, maintaining its links with the big cities. The social and economic gap between these towns and the older rural settlements grew wider and the value of the new towns for the development of the rural region was minimal [65]. In these circumstances the envisaged rural-urban integration was unworkable and the regional policy could not be accomplished.

Furthermore, the new towns - besides being the prime tool for population dispersal and regional policies - were also the major method of absorbing immigrants, though even in this respect the results were far from satisfactory. Although some towns did grow steadily, others were stagnant, and even those which showed some success suffered from serious setbacks. The low standard of housing and educational, social and cultural facilities, the lack of a proper economic basis and an exaggerated reliance on the surrounding agricultural settlements were all particularly harmful. These affected the social structure of these towns which became predominantly populated by Sephardi Jews. Thus not only did the population process of the towns develop haphazardly, but the social and economic disadvantages added enormously to the state of crisis in many of these new towns. Those who left the towns were mainly the young, the more skilled and the better educated. One writer [66] was led to the conclusion that the national tasks of dispersion of the population and social integration were contradictory.

A committee set up to examine the policy of population dispersal [67] found that towns below a certain number of inhabitants

(10,000) could not function properly. This acted counter to the prime tenets of the policy of a hierarchy of settlements. The committee found that in the conditions of Israel, the small towns failed. They were in economic and social decline, in a constant struggle for survival and were thus a heavy burden on public funds. By 1965 the government approved the recommendation "to abstain from the creation of additional new towns while devoting every effort to the consolidation of those already in existence."

4. Consolidation of the Rural Settlement

As discussed above, linked with the policy of regionalism was rural planning or the physical layout of rural settlements which is part of the overall agricultural planning. This branch was the most experienced and advanced, yet the national plan of 1951-52 and subsequent plans dealt with its aspects only briefly. This was due to the fact that agricultural planning was the realm of a rival planning agency, the rural sector. The national plan thus only summarised the detailed sectional planning which was produced by the rural institution.

In 1949-50 the rural sector published its own plan [68]. This was the work of a joint committee for rural settlement planning which consisted of representatives of the Ministry of Agriculture and the Jewish Agency.

On a national level this plan set up a target of 66,000 farm units by 1954. These were to be created in new settlements which

would comprise a population of 520,000 (26% of Israel's population target of 2,000,000 as set up by the 1949 national master plan). Dispersal of the rural population was one of the main principles of this plan. With this in mind, the plan took into account the availability of free agricultural land, water resources, irrigation schemes and, not the least, the country's security needs. The latter led to the erection of settlements in frontier zones. The plan did not provide a detailed indication of the location of each settlement but merely a table of farm units and their distribution between the various geographical regions.

No less than 345 new rural settlements were established in the short period between 1948 and 1953. From 1954 to 1965, regional projects and other developments added another 70 settlements [69]. Most of these were moshavim (co-operative settlements) and the rest were kibbutzim (collective settlements) and other types. This massive agricultural settlement brought with it not only social and economic change but also made a huge contribution to the dispersion of settlements, creating a new map of Israel.

The planning of rural settlements and agricultural production was closely connected with planning and execution of major national projects regarding water utilisation, which took place during the first stage [70]. It was also connected with the improved methods of irrigation and soil conservation. However, far beyond the economic aspect, the striking part of this facet of planning was in its social sphere. Rural settlement in Israel was an experiment in social planning. The settlement of inexperienced, untrained and often

unmotivated new immigrants was performed directly from the centre by the absorption authorities. In a similar method of settling the new towns, the immigrants were taken "from the ship to the farm" so as to remove the temptation of settling in the metropolitan centres. Since immigrants were located as groups in rural villages, this determined their political auspices and the allegiance of their members, at least for the first few years. This centralised social engineering resulted in a situation where the immigrants were highly dependent on the administrative and political institutions [71].

Though, as stated, the rural sector showed a high level of proficiency in agricultural planning which resulted from the many years of intensive rural development under central management, this sector showed little desire for collaboration with the urban sector in land development. The rural sector obviously accepted the supremacy of the national objective, yet gave its own interpretation to the tasks of security, absorption of immigrants, dispersal of population, etc. Since this sector regarded itself as the true realisers of Zionism and as the leading social and economic force in achieving Israel's national goals, it developed - or rather continued - its independent approach to land development. Its organisational links with the Ministry of Agriculture and the Jewish Agency [72] ensured direct control over public land, water resources, financial means and large economic corporations, together with influence over the immigrant absorption machinery enabling it to direct new immigrants to predetermined new villages. All these promoted the creation of an almost self-contained sector. Its ideological and political conceptions continued to feed its anti-urban attitude and

it required heavy political pressure and professional and administrative authority, together with the backing of public opinion, to get this sector to operate according to a unified policy of regionalism. These prerequisites barely existed during this stage and instead the government was committed to a policy of expansion and consolidation of rural settlements, while no parallel care was shown for the development of urban settlements [73].

At the local planning level the rural plan created seven different types of agricultural farm of which each, though they had a common basis of the old "diversified model" [74], gave priority to a different product. Their agricultural production was directed to meet the food shortages of the first few years. Two major innovations were the creation of a new type of "working farm" suitable for the hilly country, reflecting the urgent need to facilitate development of the hilly regions of Galilee and Judea (the Jerusalem corridor), and the planning of agricultural settlements which were to be populated wholly with inexperienced new immigrants. This indicated the role rural settlements played in the immigrant absorption [75].

In 1953 a further agricultural plan was prepared for the following seven years [76]. This plan introduced some important modifications to the pattern of farms. It advocated a greater specialisation in agricultural production in the light of different regional conditions, replacing the "diversified model" which mostly suited the shaky security conditions of the pre-State period and the first years after independence. In that era, every settlement had to have all the means to survive in isolation. With the growing

confidence in Israel's ability to defend its borders, settlements could start relying on other villages and economic sectors for the supply of their necessities, without the need to be run as an autarchy [77].

This change to specialised agricultural production is an example of economic influence on physical layout in integrated planning. The new villages were planned differently: in the past, each dwelling house was planned to be in close proximity to the farm unit and fields, resulting in a dispersed village; the new concept planned the village in line with a zoning system, achieving some degree of separation between dwelling houses, farms units and fields. The result was a more compact village with easier access to communal buildings.

5. Protection of Agricultural Land and Prevention of Urban Sprawl

In pursuance of the policy of extension and consolidation of rural settlements, a policy of protection of agricultural land was formulated to ensure the availability of land for the rural sector. The establishment of rural villages in remote areas, on land owned by the State, required administrative rather than legal measures to protect agricultural land. In other areas, particularly near the big cities of the coastal plain where there was growing competition between rural and urban sectors on land suitable for both, the case was different. Here additional legally binding powers were required

to restrict the sprawl of towns into the scarce resources of arable land. The protection of agricultural land thus became national policy under the government decision of May 1953 [78].

A "Committee for the Protection of Agricultural Land", a non-statutory inter-ministerial body, was set up to consider means for preserving arable land for agricultural use. The most readily available tool for accomplishing this task was the town planning law and, under the government decision, the statutory planning machinery was required to assign arable land for agriculture and to submit to that committee any development proposal or scheme which put agricultural land at risk.

The decision of the committee was regarded by planning authorities as administratively binding and it could also ask the Minister to use his approval powers in accordance with national policy. However the committee had no direct statutory powers; neither did it always have the political backing to ensure the protection of agricultural land. The result was a delay in the process of urban sprawl rather than its prevention.

The country's economic needs added weight to the policy of protection of agricultural land, rooted as it was in ideological conceptions of rural life. The rapid development of urban and semi-urban areas on the coastal plain was at the expense of agricultural land and threatened important branches of agricultural production such as citrus. Yet large plots of land within those

settlements remained undeveloped. Economical utilisation of urban land also required the confinement of urban growth and the prevention of urban sprawl into agricultural land.

The protection of agricultural land on the coastal plain was also instrumental in pursuance of the policy of population dispersal into the outlying districts in the north and south. In reality, however, the restrictions of transformation of agricultural land into building lots resulted in a sharp increase in land prices and, in turn, in speculative gains rather than any significant migration into other districts.

6. Geographical Distribution of Industry

An important aspect of the population dispersion policy was the geographical distribution of industry. In Israel industry was developed gradually during the years of this stage. Growing defence, social and economic needs led to a shift of emphasis not only from ruralism to urbanism but also from agricultural production to the development of industry.

In 1948 industry composed about 20% of the GNP and about 20% of the total labour force [79]. There were about 1,400 industrial enterprises, most of which were small and developed by the private sector. These enterprises were generally "footloose"; i.e. they could be located in any district since they were largely independent of local raw material and mineral resources. They did however require a communications network, water, drainage, electricity and manpower,

which brought them into the vicinity of the big cities on the coastal plain rather than to less development districts. On the other hand, the high cost of land in the central areas and the congestion which limited further expansion, together with the advantage to some industries of being close to raw material, were factors making industries more willing to move to the more remote areas [80].

When the population dispersal policy was formulated, a similar distribution of industry was designed to facilitate the absorption of immigrants in the outlying districts, particularly in the new towns. The plan of 1951-52 was built on a forecast of industrial growth and prescribed the relative share of each region in that growth [81]. A balanced development of the country was to be achieved through this planned distribution.

In order to provide for a proper infrastructure and services for industries in the pre-determined districts, the national plan entered the realm of micro-planning by prescribing in detail a model of an industrial estate. The model was to answer the special physical needs of industry which could not always be provided, even in the central districts [82].

The above over-emphasised the physical aspects of industrial planning and design without proper consideration of economic factors. The encouragement of industry in underdeveloped areas merely through the planning of industrial estates was naive or, rather, illustrates the inherent inability of the Physical Planning Department to accomplish much without political and administrative backing. The

root of the problem lay in the organisational structure of the government. The responsibilities and the means of developing industry were in the hands of the economic ministries and not in those of the Ministry of the Interior. The Ministry of Commerce and Industry was not involved in the preparation of the national master plan of 1951-52, nor was it represented in the Supreme Planning Council. Given the political conditions, it is not surprising that the Ministry did not take any substantial steps to implement the policy of distribution of industries during the first years.

The Ministry of Commerce and Industry first published its own industrial development plan as late as 1957 [83]. This was not an integrated physical-economic-social plan, but only economic. Further, it was not an overall comprehensive industrial plan but rather a collection of separate targets for industrial investment. Emphasis was placed on particular projects in various sectors in order to improve Israel's capacity to produce the basic needs of the local market. Thereafter a forecast of industrial development between 1960-65 was published as part of the general economic planning of Israel [84]. This included an outline of industrial policies with regard to the various sectors.

In practice, substantial government aid to industrial development did not begin before the mid-1950's. Since then, during the first and second stages, Israel has undergone an accelerated process of industrialisation.

Under the ideology of collectivism, public enterprises were regarded as the most suitable means of achieving a high degree of industrialisation. Publicly owned companies were established in various branches of industry, particularly in production based on locally available raw material or skilled human resources [85]. At the same time enormous efforts were made by the government to attract private capital from within the country and abroad. This, in turn, gave rise to the ideology of individualism in the economic life of the country.

Though the country eventually developed a strong private sector which led to ideological-political change towards individualism, the initial stages of industrial development were marked by the ideologies of collectivism and representative democracy. These are clearly seen in the formulation of a special legal framework called the Encouragement of Capital Investment Law 5710 - 1950. First enacted in 1950, the law underwent several amendments during that decade [87]. Notably the law stated only vaguely the criteria for granting "approved enterprise" status, a status which could lead to many economic advantages [88]. Other parts of the law were also significant in the extensive discretion vested with the administration [89].

This law is also of relevance in the context of the policy of distribution of industry. As the consolidated version of 1959 [90] stated, its objective (Sec. 1) is "to attract capital to Israel and to encourage initiative and investment of foreign and local capital with the view to ... (3) the absorption of immigration, the planned distribution of the population over the area of the State and the creation of new sources of employment".

However, none of the main planning documents of the Ministry of Industry and Commerce dealt with the geographical dispersal of industry, nor were they in accord with the policy of regionalism formulated by the Physical Planning Department. The result was a lag between Israel's physical and industrial development. The new towns lacked the most importance source of employment for their development. This had extensive economic and social effects on the towns. For example, the rates of unemployment and employment in relief job schemes was, during this stage, much higher among the new towns of the north and the south than those of the central areas [91]. With the lack of political pressure and public opinion to force collaboration between industrial planning bodies and physical planning agencies, no integrated planning emerged during this stage.

By the end of this stage, the government had approved a recommendation to stagger government support for industrial and hotel investment in accordance with the population dispersal policy. This entailed restrictions on public and private investment in the coastal plain, either directly by general legislative measures or by means of statutory planning schemes [92].

7. Communications Network as a Tool for Balanced Development

A new communications system with an orientation determined by the shape of the country and changed conditions was crucial to a policy of balanced development. This was a precondition for the realisation of the national plans for population and industrial dispersal, since it provided the required access to underdeveloped areas. A rational communications outlook meant an integrated system of roads, railways, new ports and airfields. Such a system was prescribed only in broad terms in the master plan of 1951-52 [93]. The plan laid down a network of routes with different functions; two communication centres for the north and the south; extensions to the railway system; and planning for the construction and improvement of ports and airfields.

The main objective was to provide a basic communication link between the central districts and those of the north, south and Jerusalem.

In 1948 there were only 1,600 kilometres of paved roads and 121 km of useable railways within the boundaries of Israel. The rapid development of the country was such that by the mid-1950's there were 2,500 km of roads and 365 km of railways. A new port was built in Eilat and the planning of a second deep water port on the Mediterranean, at Ashdod, had been started. Yet these answered only part of the country's growing needs [94].

The Minister of Transport was the main authority in the area of communication planning. It was his task to prepare detailed plans for the national network, though its implementation was the responsibility of the governmental Public Works Department of the Ministry of Labour.

A set of statutes concerning roads, railways, construction and improvement was inherited from the Mandatory government [95]. It enabled the authorities to carry out development projects while expropriating land and restricting the use of adjoining land independently of the Town Planning Ordinance and its institutions.

As explained in Part I, these Mandatory laws did not provide for public participation in the communications network, neither through "public inquiry" nor "objection". Only an aggrieved landowner had any standing in regard to compensation. This legal position was regarded by the Israeli authorities as advantageous, enabling rapid and efficient implementation of plans. Motivated by the ideology of representative democracy, they were concerned with the development of the communication network and not with the long process of public participation.

In fact there was very little public opposition to the country's physical development projects during the first stage. There was a universal belief in the need for rapid development which, in turn, nourished the acceptance of the executive authorities as the

sole arbitrators as to the form, content, location and priority in national development projects. Only during the second stage was there some vocal opposition to that conviction.

On the other hand, there were many internal wrangles between the different authorities concerning communication policy making and allocation of powers and responsibilities. Not only was national communication planning dispersed among the various central government bodies, but communication planning at the local level was also divided among district and local statutory planning institutions while the actual execution of the local roads was mainly in the hands of the local authorities. On the whole there was great ambiguity as to who was responsible for what. Co-ordination between the many institutions, despite the existence of an inter-ministerial committee established in 1949 [96], was extremely limited.

In 1957 the State Comptroller indicated [97] that there were major drawbacks in the communication policies and their implementation and he recommended the establishment of a special authority with overall responsibility for the roads and communications network. Even this was not given enough attention. Long-term communication planning co-ordinated with general physical planning was neglected for a number of years, while needs grew rapidly without available investment.

In the early 1960's the International Bank of Reconstruction made available a large loan for road construction. A five-year construction plan for major highways was prepared, though it was made by the economic Planning Board and the Physical Planning Department was not actively involved [98].

By the end of this stage, communication planning reflected a mosaic of policies, often contradicting one and the other. Israel lacked a clear national communication plan to back its other physical planning policies.

8. Parks, Afforestation and Landscape Preservation

In accordance with the tradition of preservation which was manifested in the Mandatory planning system, the Israeli national plan also gave rise to environmental values regarding natural and historical amenities. The plan of 1951-52 encompassed a section on the planning of national parks, nature reserves and forests, and the preservation of historical and cultural sites and holy places [99]. The plan was based on a survey conducted during the first two years of Statehood. This section of the national plan was revised in 1954 and 1964 [100].

The provisions in these non-statutory plans were again largely negative in the sense that they aimed at preventing certain uses in areas designated for preservation: they did not provide for direct

positive development of parks, forests or recreational areas. In order to give effect to the prescribed restrictions, local statutory schemes were gradually adapted to these national schemes.

The policy of protecting the landscape and preserving the country's heritage was sometimes in conflict with the prevailing attitude of the supremacy of physical and economic growth. As mentioned, the pressing needs of the growing population, particularly during the first stage, led to strong emphasis on the supply of basic needs, even at the expense of the quality of the environment. Only a strong conviction in the long-term importance of the development of recreation areas within the country's natural and historical attractions could counter the rampant physical development prevailing in Israel.

The clash between these conflicting values is of special significance since it also gave rise to some participation of the general public in the decision making process. As noted, such participation during the first stage was minimal, so that public involvement in this matter was exceptional. In 1953 a "Society for the Protection of Nature" was established by university students, mainly attracting Israeli-born young people. The Society was very active, not only in preventing the destruction of environmental values but also in positive actions such as the development of nature reserves [101].

Another body established in the same year, the "Society for Landscape Improvements", made significant contributions to the

restoration of historical sites. The two societies were linked and were supported by the Ministries of Agriculture and Tourism (respectively), though they were regarded as voluntary organisations. They succeeded in mobilising the general public to pay more attention to environmental problems and subsequently to direct involvement in the planning process [102]. This landscape preservation policy provided an opportunity for a breakthrough in the traditional planning process exercised by elected and nominated members within the existing legal-administrative framework.

With regard to these particular issues, the second stage began earlier than 1965 with the enactment of a special legal framework which was begun with the National Parks and Nature Preservation Law 5723-1963 [103]. However, development in this area will be discussed as part of the second stage.

9. The Perception of Statehood and Authority in Statutory

Planning Law Enforcement: The 1951, 1959 Amendments

Notably, the first Israeli amendment to the Mandatory planning law with regard to enforcement provisions was in 1951 [104]. The amending law prescribed a change in the rate of fines for contravention of planning law. The fine was not only updated in view of the changes in the value of currency, but was considerably increased as a deterrent. In addition, a penalty of imprisonment was introduced, which had not existed in the Mandatory law. Obviously this was expected to act as an even greater deterrent to potential offenders.

In 1959 [105] the rate of the fine was once again updated by an amending law which, at the same time, introduced some further new provisions regarding law enforcement. Among these were the powers to issue "administrative stop orders", i.e. orders requiring an interim stoppage of building activities, issueable by certain planning officials, before formal prosecution is made. The breaking of such an order could lead to an administrative order of demolition. It should be added that the "administrative stop order" was valid for only seven days unless confirmed by the Court. It was also subject to the right of appeal to the Court and if the order was voided the aggrieved person was entitled to compensation. Nonetheless, the new provisions were another step towards the growing powers of the bureaucracy in planning matters.

These new provisions in law enforcement were influenced by the

scope of illegal construction activities during this stage. This was a grave problem even in the pre-State period and had not been resolved even when unauthorised building was regarded automatically as a criminal offence [106]. After 1948, the growing activity of physical development, particularly in the coastal districts, brought a sharp increase in unauthorised building [107]. This phenomenon not only frustrated attempts at proper planning but also threatened the authority of the institutions exercising development control. It may, therefore, be regarded from the broadest perspective of law and order, including the authority and legitimacy of the government.

Israel had been socially polarised with immigrants from many backgrounds. The constitutional order and supremacy of the State's institutions had to be imposed upon dissident and separatist groups and individuals. The concept of a sovereign State thus required ensuring that the law and government orders were obeyed. Since the growth from a community to a society was accompanied by a decrease in the effectiveness of legal social control mechanisms, an atmosphere of complete laissez-faire sometimes prevailed. This atmosphere was nourished by assumptions of independence and the prolonged war.

Such an atmosphere was evident also in the treatment of the environment. As one writer [108] stressed, the root of the neglect of environmental questions lies in the culture of both Eastern Europe and Arab countries, from where most Jewish immigrants came. In these cultures "the streets or the domain of the public has not been felt by the individual to be his responsibility". The new enforcement provisions were probably intended not only to ensure the quality of

the environment, but also to contribute to the general objective of improving law and order.

Given the general public attitude towards the environment, it is understandable that despite the legal provisions which viewed unauthorised building as a criminal offence, such action did not evoke moral condemnation; i.e. it was not popularly stigmatised as criminal [109]. Furthermore, some justification for this illegal action was found in the growing demand for housing which was only partially met in the central districts and by the fact that plans were often obsolete and did not answer real needs in a period of accelerated immigration and growth.

Paradoxically, the new law enforcement provisions which were aimed at ensuring the authority of the planning institutions and at imposing law and order in the sphere of physical environment were also counter-productive due to the way the authorities themselves used their powers. As during the Mandatory period, the task of law enforcement was vested primarily in the hands of the local commissions. Though the district commissions had default powers to act where local commissions failed to act, they rarely intervened [110].

In general these planning authorities were reluctant to enforce the laws and unwilling to bear the political cost of assuming policing functions regarding compliance. They intervened only when put under considerable pressure by the press or important civic groups [111]. Enforcement on a selective basis made those legal

powers yet another source of political gain and destroyed much of the legitimacy of the authorities' actions.

Planning law enforcement during this stage therefore continued to be totally ineffective and one of the most disorganised areas in public life.

10. Collectivism and Individualism in Statutory Planning:
Rearrangement of Plots of Land - The 1957 Amendment

In 1957 new provisions regarding combination and repartition of plots of land in a detailed scheme were introduced [112]. The initial ideas underlying these provisions were not new: they were first raised in the 1940's [113]. They probably reflected the outcome of the dual struggles between the ideologies of representative and participatory democracy on the one hand, and of collectivism and individualism on the other.

The new provisions first stated in a general way that a detailed scheme could impose "the reconstruction of plots by the alteration of their boundaries or by combining two or more original plots held in separate ownership, in common" [114]. The older section had presumably been aimed at merely minor changes in the boundaries of plots: this was not the case with the 1957 amendment. Several new sub-sections which were added by the Israeli legislator to the Mandatory provisions portrayed a different picture, enabling total replanning of built, as well as unbuilt, areas and profound changes

in the existing division of the land.

The law prescribed few guidelines [115] for this significant reorganisation of the division of plots. These were: (1) New plots had to be allotted as near as possible to the place where the allottee's previous plot was situated; (2) The value of the new plot (or share in the plot) was to be as similar as possible to the old plot's relative value to other neighbouring plots; (3) When the newly constituted plots would not allow the maintenance of such relativity in land values, an adjustment by payment was to be made. Thus an individual owner who would gain by the new allotment of land whose value was more than his previous land would be asked to pay back the excess, while another individual whose new plot was of less value would be entitled to compensation for his loss.

The principle of maintaining relative land values between the various landowners did not mean that the value of the land, as a whole, could not decrease or increase as a result of the preparation of the new plan. In either case the land was, in theory, subject to the general rules of compensation or betterment tax respectively. In practice, however, since replanning required extensive land for public use, compensation was set off with betterment tax.

These provisions typified an increase in the planning authorities' powers of intervention in private property rights. Such intervention, supposedly in the interest of the general public, reflected the dominance of the ideologies of collectivism and representative democracy. Collectivism was expressed in these provisions which attempted to overcome the old problem of speculative division of land that hampered proper planning and development. It was also expressed in the enabling of large scale positive development by public enterprises on the new accumulated plots. The extensive new powers of the authorities allowing them to impose the rearrangement of plots also reduced to a minimum the bargaining power of the small landowners whose land was originally located in the middle of an area designated for new development. Representative democracy ideology was also expressed in different ways with a new provision which distinguished between the executive and judicial powers in matters of rearrangement of plots of land. Under the amending law [116] the district commission had the final say in prescribing the new division of plots while the court could only review questions related to the value of the land for purposes of compensation.

In the clash between collectivism and individualism the amending law was not however totally one-sided. As described, the principle of maintaining the existing shares of land (between the public and private sectors and within the private sector between individual owners) was fundamental in the reorganisation of plots.

The law also allowed the advocates of individualism some leeway. The old institution of objection to a proposed scheme continued to be the formal method of participation of an interested person in the decision making process. In addition to this the amending law gave the right to an individual landowner to require the local authority to purchase his land when placed in joint ownership [117]. This had a far reaching effect due to the financial difficulties of the local authorities and it acted as a counter to their willingness to impose that provision.

11. Representative Democracy, Collectivism and Public Participation

In line with the Mandatory tradition, though not with its underlying colonial ideology, the statutory planning system during the first stage did not provide for discussion or consultation with the general public, but merely for a natural justice type provision: those whose interests might be affected by a statutory scheme were given the right to lodge their objection. However, the publicity given to the fact that a process of scheme preparation was under way was minimal [118], and many were unaware of the new planning provisions until after the scheme had been approved and implemented. Even when those interested used their right and objected to a proposed scheme, they often found that by the time the proposal reached this stage they could hardly influence the substantive content of the scheme. The authorities for their part did not demonstrate, save in minor parts, a willingness to revise their proposals in view of the objections.

This state of affairs was encouraged by the prevailing ideology of representative democracy. It also reflected the early phases in the evolution of Israel's politics. During the first phase, the political parties not only helped appoint candidates for the legislative and executive institutions and played a role in formulating a general framework for public policies, but they also performed the role of pressure groups [119]. They dealt with matters of concern to very small groups and represented them before the decision making institutions. The parties did not leave much room for non-institutional public activity and the political system did not encourage such development.

Further, the heterogenous social composition of Israeli society, with a high proportion of immigrants from a variety of backgrounds, helps explain the weakness of non-institutional pressure groups and the lack of public demand for more involvement in planning decision making. The process of urbanisation was, by and large, characterised by a lack of social organisation at the level of neighbourhoods and quarters [120]. This again reinforced the status of the formally elected institutions as the sole representatives of the public.

The prevailing ideology of collectivism and anti-individualism also prompted the unwillingness of politicians, administrators and planners to broaden the circle of participants in the planning process. The existing participation of retailing interests was regarded as counter to the general public good, and it was assumed

that an extension of the circle of participants could lead to further pressure from groups with selfish motives. Planning remained almost exclusively in the hands of official institutions.

This position was also indirectly supported by the High Court of Justice in an interesting case dealing with physical planning of a kibbutz [121]. This case explicitly expressed the reflection of collectivism in the legal position regarding the question of who was responsible for determining the future use of the land. The answer given by the Court vested the right to initiate planning proposals of a kibbutz with the official institutions rather than with the settlers themselves. It is the irony of Israeli statutory planning that such a judgement was made in regard to physical planning of a kibbutz, since this type of planning has always been an example of intensive participation of the affected community in the planning process. The Court stressed the collective ownership of national land as a reason for preferring the official public institutions over the settlers themselves.

In comparison, public participation under the English system during the same period was different only in the awareness of the need for such participation. In practice it was very similar. In 1946 Lewis Silkin, the then Minister of Town and Country Planning, stated that "the people whose surroundings are being planned must be given every chance to take an active part in the planning process ... In the past, plans have been too much the plans of officials and not the plans of individuals, but I hope we are going to stop that" [122].

Despite this statement, the 1947 Act and subsequent legislation during this stage did not reveal any expectation of public participation in the plan making process. In England as well as in Israel the submission of objections by people whose interests were affected by a proposed plan was the core of public participation. However, in England the procedures involved a public inquiry or private hearing, while in Israel there were informal hearings of objections by the district planning commissions. Beyond these legal technicalities it can be assumed that differences in the levels of administrative and legal maturity between the two countries, and the tradition of an apolitical civil service in England as opposed to the then over-politicised bureaucracy in Israel, created entirely different processes of public participation in the two countries. Each process viewed in its local circumstances led to growing criticism, though the criticism in England bore substantial fruits during the 1960's when the issue of participatory planning was recognised, administratively and statutorily.

C. PLAN MAKING DURING THE FIRST STAGE

1. National Planning as a Process

The formulation of a new master plan in 1949 was not just a single act but turned into a continuous process; a new plan was published every few years. The 1951-52 plan was revised in 1954 and in 1957-58 a new plan, approved by the Supreme Council, was published. This in turn was updated in 1961 and 1963 [123].

These successive non-statutory plans had much in common: they were based on similar ideologies, identified the same type of problems, shared common objectives and prescribed a similar policy of population dispersal and balanced development of the country as a whole. However, the underlying principles and values did not form part of the plans which were merely the practical implementation of these parent elements. Based on the country's map, the plans portrayed the desired distribution of population by prescribing the target population for every region and town. They indicated in broad terms the location of industries, agricultural areas, communications networks, parks and nature reserves and other planning aspects of national importance. The regulative aspect of land use at a national level was the core of these plans. They did not deal directly with economic and social planning but merely with the effects of socio-economic policies on the use of land. This corresponded to the prevailing conception of physical planning among professionals.

Since the implementation of these plans was in the hands of the various governmental agents, the planners themselves regarded the plans as "working hypotheses" and general guidelines [124]. This view, according to one critic [125], resulted in the tendency of planners to follow the reality of physical development rather than try to change or control it. In this way they contributed to the further growth of the central districts and moved away from the original policy of population dispersal.

2. Regions of Priority

Complementary to the national plans was a plan in which the various geographical regions were categorised according to a hierarchy of six priorities for public investment and directed development. This was aimed at strengthening the policy of population dispersal. It clearly indicated that the southern and northern regions, and in them the newly established towns, were the preferred areas for public development. The first plan of this kind was prepared and approved by the cabinet in 1955 and in 1964 a new updated plan was prepared as part of the national master plan [126].

These plans also dealt only with the physical aspects and did not elaborate the social and economic factors of planned regional priorities. Again this was a result of the organisational structure of, and the division of powers between, the planning bodies and the ministries responsible for economic development. The fact that each governmental body was left to decide the priority to be given to each

region made the very concept of a co-ordinated governmental policy futile.

In 1965 the committee which dealt with the implementation of population dispersal recommended more integrated governmental activity in order to overcome the gap in the development of the various regions [127].

3. District (Regional) Plans

Following the national plans, a general set of district (regional) plans for the districts of Jerusalem, Tel Aviv and Haifa were prepared after 1951 [128]. These were broad outlines and aimed at applying the principles defined by the national plan. These blueprints gave some indication as to the way land was to be used in the respective regions. Following the Mandatory planning legacy regarding the functional basis of the different regions, the first district (regional) plans prescribed that Haifa was to be the industrial, commercial, communication and administrative centre of the north and Jerusalem was to continue as the cultural, spiritual and political centre, while undergoing extensive demographic, economic and physical growth in the town itself and in the Jerusalem Corridor. The Tel Aviv region was to be restricted in its growth and the surplus population directed to the periphery [129].

These plans were not regional in the sense of positive planning under the policy of regionalism as explained above. They also differed from plans following the rural-urban integrated planning

policy, as described in reference to the Lachish project. They were simply non-statutory negative planning provisions and guidelines for statutory local schemes. These schemes were small-scale and failed to fulfill the expectation of covering the whole map of Israel with a second tier of non-statutory regional plans.

4. Local Plans

National and regional policies were to be realised at the local planning level. However, local statutory planning during the first stage was in a state of total chaos. In view of accelerated physical and economic development and dramatic social changes, the old pre-Independence schemes (when they existed) became obsolete, not reflecting the new national and regional policies. A new set of outline and detailed local schemes were required if planning was to have any influence on reality.

The enthusiasm of the planners in the early 1950's to provide extensive local schemes was very promising. They envisaged systematic planning of the growth of towns according to the population targets set up by the national plan. New local schemes were to elaborate on the functional links between towns and other settlements in each region. Special emphasis was to be placed on improving housing standards, rehabilitation of slum quarters, building of a better communications network, open spaces and green belts. The new schemes were expected to move from conservative, architectural-oriented Mandatory planning to a much more comprehensive and positive approach. It was hoped that this approach would also remedy the

ill-effects of the disorderly developments and speculative utilisation of urban land, both characteristic of the pre-State period.

In reality very little was done to formulate new local outline schemes which would give an overall picture of the future development of urban areas. The preparation of such plans in the light of the general policies was left to the local statutory planning machinery. The only exceptions were that of Jerusalem and the new towns, which were planned by central government planning agencies rather than by local authorities [130]. In fact only a few local commissions were engaged in systematic planning [131]. Improvisation, or rather hand-to-mouth planning, was much more common, and most of the work was devoted to detailed planning of particular neighbourhood where public pressure and, more often, private developers, demanded it. Most statutory plans were no more than variations of old plans with regard to particular parcels of land [132]. They often provided for higher densities and relaxation of building limits, as demanded by private developers. Even the more comprehensive post-Independence schemes were still prepared under the 1936 Ordinance, following the early Mandatory traditions of rigid land use maps and emphasising the architectural-aesthetic aspects of town planning. Zoning was employed as the prime tool for regulating physical development. These plans, intended first and foremost as guidelines for the exercise of control over building activities, soon became out of date and were unable to serve their original purpose.

The neglect of local planning in many urban areas can be partly explained by adherence to the pro-rural and anti-urban ideology. As pointed out, the dominant attitude among governmental ranks favoured agricultural settlement in frontier zones, or at least new urban settlements in these areas. The growth of the big towns in the central regions was regarded as an obstacle to the accomplishment of the main planning objectives and thus received little government attention. The local authorities lacked any vision, willingness and technical staff to produce their own comprehensive plans, and their strong dependence on the central government left them without the powers and means to carry out large scale development projects. Housing, public works, industrial and commercial development were usually the tasks of the central government or the realm of the private sector. In fact the local authorities had few functions in these areas and their main resource was development control. The fewer updated statutory schemes there were, the wider was the discretion of local commissions in exercising the power of development control which, as pointed out, enabled them to use power to achieve political and financial gain.

D. THE LEGAL-ADMINISTRATIVE SYSTEM AND THE PLANNING SYSTEM

The Israeli planning system was built on Israel's democratic political culture. The part played by each of the three branches, the Knesset as legislator, the Government as the executive, and the judiciary (particularly the High Court of Justice) were well evident in planning.

1. The Legislator

The legislator made the initial act of carrying over the Mandatory Town Planning Law, the most practical method of avoiding a legal vacuum, while making some adjustments to the law. However, the legislator did not work systematically according to a pre-conceived wholesale reform but responded to pressures to tackle certain aspects, while ignoring others. The result was a piecemeal change in the existing law, turning it into a disorderly mixture of Mandatory and Israeli concepts and ideologies, and the impact of statutory planning on the overall development was - if not negative - unimportant.

Why was the expected reform in the dynamic sphere of town and country planning delayed for such a long time? Why was the huge gap between legal tools and actual development needs for which these tools were designed allowed to continue?

These facts are particularly difficult to grasp in the light of the fact that the planning legislation was largely the product of the

1930's and was already regarded by the mid-1940's as inadequate by the Mandatory administration, the Jewish communal institutions and professional planners alike [133].

The explanation for this legislative omission requires a distinction between formal and substantive causes.

Formally, the preparation of the new planning law was not neglected. Planning legislation was on the agenda since the fourth stage of the Mandatory rule, as described in Part I [134]. In 1949, the Minister of Labour and Construction, then responsible for town planning, set up a public committee to prepare new legislation [135]. On the basis of this committee's report, a detailed proposal was prepared in 1953 by the Ministry of the Interior, which then was in charge of planning matters [136]. After some years of elaborations, a draft Planning and Building Law 5917-1959 [137] was submitted to the Knesset. This bill did not even have a first reading since, owing to a political crisis, the Knesset was dissolved. The formation of a new coalition brought political changes in the Ministry of the Interior, resulting in further examination of the proposed law, and a revised version of the bill was submitted in 1962 [138]. The Knesset dealt with it extensively and, in 1965 (after almost twenty years of preparation), a new Israeli planning law was promulgated.

These were the overt events which delayed and then led to the promulgation of the new law. However, behind this process there were more substantial reasons for the long "pregnancy" of this Israeli law.

First, the objective conditions of constant crisis and emergency obviously influenced the priorities of the executive and the legislator. There were so many compelling problems requiring solutions that only a firm conviction of the importance of the pattern of planning in general, and of planning law in particular, could have led to the introduction of well thought out planning legislation. Such a conviction did not exist among many of the ruling elite in Israel and a new planning law was considered by them to be of secondary importance.

Second, the ideological conflicts, political rivalry and clashes of interests to which the preparation of new planning legislation gave rise did not encourage a determination to create a new legal framework. A common tendency to avoid controversy by means of inaction was applied and the old planning law served as a measure of status quo between conflicting attitudes.

Third, the existing legislation served the bureaucracy well to a great extent and, since there was only limited professional pressure and almost no public demand for comprehensive reform, the old system was maintained. The existing law allowed the central government, particularly the Ministry of the Interior, to control local development. It was thus a source of political influence. At the same time it allowed executive ministries to pursue their development projects free of statutory control. The law was also a source of political strength for local authorities, mainly through their control over development.

Fourth, the informal administrative patterns of non-statutory planning provided a favourable alternative to legal tools. This also fit well into prevailing anti-planning attitudes which advocated pragmatism and flexible methods in the bureaucratic work of the central and local administration.

For all these reasons, the Israeli planning law remained largely unchanged during the first stage and its characteristics were generally those of the Mandatory law. The law remained paternalistic, allowing the authorities to impose planning from above rather than encouraging the emergence of planning from the local will. It was also conservative in its regulatory land use approach, as opposed to an approach advocating comprehensive and positive planning; it was interventionist by entering excessively into the realm of private property rights; and of limited scope, since it dealt merely with local planning.

Although various ideologies and values have been given as factors influencing the different provisions of the law, the most convincing manifestation is that of collectivism-socialism as opposed to individualism-liberalism.

2. The Executive

The executive under the rule of a coalition headed by the Labour Party was generally motivated by democratic-socialist ideology and was extensively involved in planning and physical development. As

described above, the executive made more use of its non-statutory discretionary powers than of statutory powers. The dramatic physical development of Israel cannot therefore be attributed to any efficient planning law, though it was related to the general legal system. This system, which enabled a flexible implementation of physical development by the government and public sectors, played an important role in this area. The indefinite power of the executive to run the country's affairs was subject both to explicit statutes and to democratic principles. An example of the former is the Town Planning Ordinance which explicitly prescribes the powers, rights and duties of all the participants in the planning and development process. This law, which gave wide powers to the administration, provided the framework for statutory local planning only. In the fields of national and regional non-statutory planning and government development, the executive's general discretion prevailed.

Given the highly politicised nature of the Israeli bureaucracy, this system allowing wide discretionary powers had a very negative effect, with built-in incentives to manipulate resources for political and sectional ends.

In addition, the other limitation on the general power of the executive - democratic principles - provided only a loose constraint and was applicable mainly when the rights of an individual were at stake. An example of this is the application of the Common Law attitude that the individual is at liberty to do whatever he wishes so long as it is not forbidden by law. Hence the government, in its non-statutory planning and development activities, could not impose

limitations on private property owners.

3. The Judiciary

The judiciary during this formative stage had the important role of determining the democratic tenets of Israel, which was particularly the task of the High Court of Justice. Here the Court was not engaged merely in law application or textual interpretation, but in actual law making. General principles were also defined by this Court in the areas of constitutional and administrative law, which obviously influenced the operation of the town planning machinery. In addition the Judiciary played a more particular role in planning associated with the interpretation and application of the town planning legislation.

The Court was not asked to deal with issues related to the exercise of non-statutory national or regional policies, nor to deal with governmental involvement in the physical development market. It may be assumed, however, that had such matters been referred to the Court, it would have refused to consider them under the "doctrine of justiciability" and the requirement of "standing" [139]. In the first years of statehood, the High Court of Justice showed a relatively high degree of self-restraint. In a set of decisions, the Court repeatedly confirmed the principle that domestic policy, as well as defence and foreign affairs, were in substance matters for the political-administrative institutions rather than for the Courts. Similarly, the Court ruled that substantive planning decisions were a matter for the planning machinery and that the Court was neither a

further instance of appeal nor a supreme planning body for re-examining such matters [140].

The Israeli Court was following the well-established line in the English system [141] which had been adopted by the Mandatory courts [142], whereby matters of planning policy as well as other questions of vires were left to the discretion of the planning authorities. The inevitable result was that such matters could not be challenged in court. In Israel this self-restraint was explained [143] as an adherence to the constitutional order; i.e. the separation of powers between the branches of government. It also reflected the Courts' functional inability to decide such matters for lack of experience and clear guidelines.

In 1948, in one of the first cases considered by the High Court of Justice [144], President Justice Zemora said: "the task of this Court is to make sure that the law will be obeyed and that the executive power would not act in infringement of the law. Thus as long as the executive power is acting within the framework prescribed by the law, it is not in the power of this Court to examine the nature of the action." This expression of a conservative vision of the Court's role was also reflected when the High Court emphasised that planning matters "are wholly within the province of the planning authorities and it will not interfere with the exercise of their discretion in cases in which they have acted ~~un~~lawfully" [145].

This narrow attitude of the Judiciary regarding its role in reviewing administrative actions or, more specifically its non-interference in planning decisions, considerably supported the planning administration. Thus the Court promoted, even unintentionally, the concept of paternalistic planning which was motivated by the ideologies of representative democracy and collectivism. It contributed to the self-confidence of planning authorities and discouraged, if only psychologically, direct involvement of non-organised public in what appeared to be solely the concern of the executive power [146].

In HCJ 16/50 Igra Rama V Tel Aviv Municipal Council [147], Justice Agranat made some general comments on the statutory planning system:

"As is well known, when the Mandatory legislator enacted the Town Planning Ordinance 1936 (with all its subsequent amendments) he strove to accomplish certain objectives with regard to the public good. For example, the improvement of public health and protection of public hygiene, development of roads in certain areas, the improvement of housing conditions, beautifying neighbourhoods, etc. He tried to carry out this objective (sic) at the expense of the individual's freedom to develop his land as he wished; that is, at the expense of private property rights ..." [148].

Here the Court classified town planning law under the domain of public law as distinct from private law. Thus without a specific statutory right, any neighbour or aggrieved person had no standing on which to challenge the authorities' decision. Planning application, the Court added, is a matter between the local authority and the applicant. The remedy of an aggrieved neighbour would be in the

sphere of private law, by direct proceedings between the two neighbours, which would take place in the ordinary courts rather than in the High Court of Justice [149].

The practical result of this judgement was that it freed the planning authorities from defending in Court the bulk of their decisions regarding the granting of planning permission [150].

Subsequent judgements of the High Court of Justice continued the same trend of protecting the extensive discretion of the planning authorities. In HCJ 327/60 *Rafaeli V Jerusalem District Planning Commission* [151], the Court upheld a local commission's decision to refuse a planning permit even when the reason given by the commission was invalid though other lawful reasons existed to refuse that permit.

In another case [152], the Court did not entertain a motion by a petitioner who claimed that because of discrimination his planning application was refused while a similar application by somebody else was successful. The Court rejected this petition on the ground that "a grant of undesirable 'relaxation' in one case could not possibly justify the award of a similarly undesirable permit" [153].

Similar results emerged from the Court's rulings on other provisions of statutory planning. For example, the Court gave an almost free hand to local authorities to determine the right time for implementing plans which designated land for expropriation for public purposes [154]. In one case [155] involving 12 years of delay in

carrying out expropriation and in another [156] 14 years, both were regarded by the courts, in the circumstances, as not unreasonable periods of time, while affirming that the authorities were the bodies to determine priorities in public expenditure.

These cases also helped promote representative democracy ideology in planning. Furthermore, the Court not only helped institutionalise the authority of the planning authorities, but also promoted the powers of the public bodies in charge of administering national land. By supporting these representative bodies, the Court reflected the superiority attached to national over factional considerations.

This tendency is revealed in HCJ 4/55 Ein Harod V The Minister of the Interior [157]. This case involved a conflict between two kibbutzim (rural settlements) regarding a piece of land. Planning proposals for that land which had been submitted by one kibbutz to the planning authorities had been approved and supported by KKL, a body of the Jewish Agency which administered national land, and the formal landowner. The proposal of the rival kibbutz, the petitioner, was not supported by KKL. This fact became crucial in determining the legality of the planning procedures. The final statement of Justice Vitkon had wide and general application. He said:

"Thus, that tiring technical dispute on planning procedures involves an important and substantive question with great significance to the rural settlement in our land. The question is: who determines the future of this land; KKL (Jewish National Fund), the legal landowner, or the settlers who settle on it. This is the main question and we think that the answer is not in any doubt. KKL land is a national property and the decision is in the hands of its executive. This answer does not

derogate from the rights of those who are called to cultivate the land and to grant a redemption for the land. This is the only answer which not only is consistent with the legal position but also with the basic principles of national settlement as were formulated as early as in the Fifth Zionist Congress. With due respect to the settlers' wish it can not stand against the wish of the institution in charge of settlement affairs" [158].

Occasionally the High Court of Justice did adopt a bolder attitude towards its role in reviewing substantive as well as procedural aspects of planning decisions. Several examples in which this attitude is manifested point to another impact the Court had on the planning system relating to the protection of the individual's proprietary rights against planning authorities when they acted improperly. Here the Court's attitude was of considerable help to the liberal ideology of individualism against socialist collectivism and to a greater extent the ideology of participatory democracy against representative democracy.

The fundamental dilemma inherited in regulative planning, the conflict between public interests and private rights, was in fact resolved by the law in giving supremacy of the former over the latter. Since Israel has no constitution, the mere act of the legislator in re-enacting the Town Planning Ordinance was sufficient to assert the legality of planning provisions [159]. However the Court did try to minimise the polarity of the conflict by advocating, wherever possible, a policy of balance between the two interests.

In many cases the individual had to be protected when the authorities exceeded their powers. For example, in HCJ 192/64 Shemtov Argaz V Jerusalem District Planning Commission [160], a proposed

scheme was deposited in 1954 and the procedures for its approval were not carried out for ten years. During that time the petitioner, who owned a vacant plot of land in the area covered by this scheme, was unable to use the land which had been frozen. Under Art. 18 of the 1936 Ordinance, there was a minimum period before which the authorities could not make the final decision of approval. However the law did not prescribe a maximum period within which a decision had to be made. Thus, since the landowner could not move the planning commission to carry out the procedures, he lodged a petition with the High Court of Justice. The Court in this case applied the principle that an authority should act within reasonable time, particularly when individual rights are involved. The Court therefore ordered the commission to make up its mind as to the future of the area.

In another case the local community rather than the individual needed the Court's protection. In CA 120/60 Halperin V Kutchinski [161], the Court reviewed planning permission which had been granted for the erection of a cinema house in the midst of a quiet residential area. Planning permission had in fact been granted to the particular landowner to help him save his investment. The Court held that the authorities had not paid proper attention to the interests of the public, in fact the interest of the residents of the immediate neighbourhood, but gave preference to the interest of an individual landowner. The Court repealed the permit on the grounds that it was issued on the basis of irrelevant considerations.

A third impact of the decisions of the High Court of Justice on the planning system through its intervention in substantive planning

can be seen in other cases where the Court stressed that statutory town planning should be confined to its physical land objectives [162]. This emphasis led to the evolution of the planning system along conservative and traditional lines which, together with other reasons, prevented town and country planning from becoming the pivotal factor in the development of a comprehensive system of national planning.

In the Ein Harod case, Justice Vitlon expressed a common attitude that the provisions of town planning law are largely "technical problems". In several other cases the court quoted Art. 12(1) of the Ordinance, which stated the "general objectives of securing proper conditions of health, sanitation and communication, and amenity and convenience in connection with the layout and use of land". These, in the Court's view, were the sole objectives for which planning could be exercised.

In HJC 180/54 Histadrut Harokchim Beyisrael (Israel Pharmacists' Association) V Tel Aviv District Planning Commission [163], a question of the validity of a kind of economic consideration in statutory planning was raised. In this case the local commission, on the initiative of the Pharmacists' Association, tried to introduce a scheme prohibiting the opening of new pharmacies within a certain distance of any existing pharmacy. The district commission refused the proposed scheme. Here the Court per Justice Bernzon held that any restrictive condition in a statutory scheme had to be related to the general purposes as set up in Art. 12(1). Interference with free competition in the pharmaceutical trade so as to protect (or

otherwise benefit) existing pharmacies was regarded as outside the scope of a statutory plan [164].

This judgement did not, however, bring this particular subject to a close. Since the Pharmacists' Association was a determined pressure group, it achieved its economic aim through direct legislation. In 1964 the Pharmacists Ordinance was reformed and it included a provision which stated that "A pharmacy shall not be opened at a distance of less than 500 metres from an existing pharmacy" [166]. This development is an example of an alternative way of prescribing planning norms. It also indicates a legislative reaction to an unpopular judgement [167]. Through this legislation the freedom of employment was superseded by other considerations.

Another expression of Justice Bernzon's strict rein over the scope of physical planning can be found in HCJ 188/63 Batzul V The Ministry of the Interior [168]. In this case Bernzon held that social-religious considerations as to the public peace were outside the scope of planning. The circumstances of the case were related to a stormy public debate over whether to allow the breeding of pigs and the sale of pork in Israel. In the event, a law was enacted prohibiting pig breeding except in specific areas [169]. Planning permission for the erection of pig sties in one of these areas was the subject of the case.

The petitioners, religious Muslims, opposed the grant of the permit on the ground that it offended their religious beliefs and their way of life, and this might lead to breach of the public peace

in the neighbourhood. The Court per Justice Bernzon held that even if all these assertions were true, the District Planning Commission could not take them into consideration since it must consider only planning and sanitation principles. The exact meaning of what constitutes relevant policy considerations was not provided but the ruling out of social and religious considerations inevitably led to a very narrow definition of the scope of physical planning.

The nature and form of the statutory scheme was also affected by this result. In the Pharmacists' Association case, Justice Bernzon accepted the assertion that "nothing is allowed to be included in an outline or detailed scheme which cannot be shown on the map of the area" [170]. This virtually emphasised the map rather than any principles which might have been expressed in the regulations accompanying the map. Such a form of statutory scheme corresponded to the physical land use nature of planning as it was conceived not only by the Court but also by the contemporary planning profession.

Despite the strict view of physical land use planning which dominated this stage, there was a growing tendency advocating the broadening of the scope of planning considerations, which became more evident in the second stage. This tendency gave legitimacy to some of the factors which in practice influence decision making in planning.

In the case HCJ 261/63 Megidovitch V Northern District Planning Commission [171], which again related to the issue of pig breeding, a proposed outline scheme permitted the erection of only one pig slaughter house in the area covered by the scheme. Planning

restriction in this case was explained as following governmental national policy which limited the number of slaughter houses, of any kind, in every sub-district or region. Considerations of public health were said to be the grounds on which this policy was based, since it would allow effective veterinary inspection. The petitioners were refused a permit for the erection of a second slaughter house in that area.

The petitioners claimed, on the basis of the previous case, that the planning authorities were exceeding their powers by considering not only the physical effects of the proposed building on the neighbourhood, but also the effect of the business and the danger that inefficient inspection might cause to the general public health. Considerations of the way trade and industry was performed, it was claimed, fell in the realm of another authority under a different law. Justice Landau rejected this assertion and affirmed the decision of the planning commission, applying an ambiguous criterion of reasonability in determining the scope of planning authorities' powers to act in pursuance of the statutory planning objectives. Art. 12(1) of the Town Planning Ordinance 1936, said Justice Landau [172], "was phrased in very wide and general terms. Thus the scope of provisions which are allowed to be included in a scheme should be interpreted broadly so as to enable the accomplishment of the objectives set up in the article."

Nonetheless, he moved only a little from the physical nature of planning considerations, ruling that "proper conditions of health and sanitation" include not merely matters directly connected with the

building (the slaughter house) and its surroundings but also the effect of a lack of inspection of the production process in those premises, and that the potential risk to the health of the consumers, wherever they are, is a legitimate consideration. Implied in this was a move from the rigid form of land use map towards planning policies which are not necessarily confined to specific physical-spatial boundaries.

It is interesting to compare this ruling with the case of *Fawcett Properties V Bucks C.C.* [173] in the English court, from which Justice Landau adopted the criteria of "reasonability". Fawcett is, in Prof. Jowell's words, an example of the "strict interpretation of the legitimate scope of planning by the Court" [174]. Here Pearce L.J. ruled that an authority which acts "from some housing or public health or social consideration other than the town planning authority would be taking the wrong matter into account". However, in Israel Justice Landau took a different view as to the scope of public health considerations.

Further expression in this direction can be found in CA 577/66 *Volochwinsky V Ofer* [175]. Here Justice Sussman ruled that the planning authorities were allowed to take into consideration the economic viability of a proposed scheme in order to satisfy themselves that the scheme could be implemented. Though he held that such consideration should be additional and subsequent to the basic considerations regarding the physical planning aspects, this ruling was indeed a change from the traditional line pursued by the Court and the planning profession alike.

A further impact of the Court on the planning system was with regard to the way statutory planning was applied to the physical development market or, more specifically, the differences between the privileged mode of operation of the public (governmental) sector and that of the private sector. The High Court of Justice heavily criticised the legal position which allowed public development to operate above the statutory planning restrictions. This was particularly striking because private developers and individuals were subject to highly stringent planning provisions.

HCJ 194/56 *Mirrof V Director of Housing Department* [176] demonstrates the injustice of this legal situation. The petitioner had built himself a house in accordance with the restrictions imposed by the local scheme. He obviously expected his neighbours to comply with the same restrictions so that the low density character and amenity of the neighbourhood would be preserved. However, his expectations proved false when a large housing estate was built on neighbouring land by no other than the Housing Department of the Ministry of Labour. The public housing project infringed on several (though minor) aspects of the statutory scheme. Yet the Court ruled that in view of the general principle prescribed by the Interpretation Ordinance (Sec. 42), the inevitable result was that planning legislation, not explicitly imposed on the State, did not bind the activities of government departments [177].

In another case [178], Justice Landau hinted at his opinion on the State's privileged position, sympathising with a petitioner whose application for change of use had been refused. In the circumstances, the petitioner could not use his land for agriculture because his crops were constantly damaged by children living in a neighbouring housing estate. That estate had been built by the State on agricultural land, without any regard to the planning restrictions.

The view of the Court as to the injustice caused by the legal position was in addition to the outcry of private developers against unfair competition from government agencies in the development market. The practical effect of the criticism was that this situation was largely changed during the second stage [179].

By criticising the privilege of the government, the Court not only undermined the supremacy of the administration, but also supported the advocates of liberalism and individualism.

CHAPTER 8. THE SECOND STAGE OF STATUTORY PLANNING 1965-1980'S

In 1965 an Israeli Planning and Building Law was enacted [1]. It should be remembered that each new Israeli law which replaces Mandatory legislation is seen as an expression of the State's sovereignty. The new planning law was considered by some as particularly significant, since it replaced a law which had come to symbolise British restriction on Jewish settlement and development [2]. With its enactment, a new era in the evolution of Israel's planning system was opened. It is therefore appropriate to describe briefly the general context in which the law was put into operation.

The years of the "second stage" brought considerable change to many aspects of life in Israel. Demographically, Israel grew from 2,598,400 at the end of 1965 to 3,977,900 by the end of 1981 [3]. The Jewish sector grew during this period from 2,299,000 to 3,320,300 [4]. Though this growth in the Jewish population was very high, the proportion of new immigrants was much smaller compared with the previous stage. The proportion of Israeli-born citizens increased steadily, thereby creating greater social stability within the population as a whole.

The Jewish sector was still dominated by a high proportion of urban population in 1965 at 81.8%, which rose to 90.3% by 1981 [5]. Though the rural sector continued to play a very important role in the political, social and economic spheres, albeit less than previously, at the same time the urban sector and local institutions

increased their political power. The new towns not only became an ideologically legitimate mode of Zionism, but also a source of political power for the "old" immigrants [6].

Compared with the early years of Statehood, Israel's existence became much more secure during this stage. This was particularly true after the Six Day War in 1968. However, Israel still has considerable defence problems, as the Yom Kippur War of 1973 demonstrated; physical development and the establishment of new settlements have remained closely linked with national security, acting as a means for solving defence problems no less today than in the pre-Independence period.

Israel's economic and physical development continued rapidly and Israel can now be classified as one of the developed Western countries rather than as a "Third World" type developing country.

The process of urbanisation and industrialisation led to great improvements in the standard of living. Israel's society, in many respects, can be characterised as a consumer society. Yet with the appearance of affluence, the gaps between different socio-economic classes widened. Political pressure from the lower classes brought public attention to the old mechanisms of allocation of resources and, as a result, the government concentrated more on the welfare of the public as a whole. This was expressed particularly in the development of higher public housing standards, the rehabilitation and reconstruction of inner cities and slum areas, and the consolidation of the development of the new towns.

In internal politics, the status of the political parties decreased. Their role in issue initiation and policy making was weakened, while statutory and administrative institutions took over many of these tasks. The rule of law has generally prevailed over factional interests and the country's democratic maturity was demonstrated with the fundamental change of government after the 1977 elections. However, as is often apparent in the sphere of planning, inter-ministerial rivalry and factional interests are still part of the administrative decision making culture.

Though representative democracy is still dominant, non-establishment public pressure groups have become part of normal political life. This had been manifested in protest movements after the Yom Kippur War and recently after the War in Lebanon.

Of great significance is the major change in public awareness of the necessity to preserve the quality of the environment and prevent ecological catastrophes. The environmental issue was, in fact, created during this stage, and it has strongly affected social and economic life, as well as greatly influencing the operating of the planning system.

Finally, the institutions of State Comptroller and the High Court of Justice became very influential and highly respected by both government and public alike. They have gained more confidence and have intervened in matters which were previously the sole realm of the executive authorities. They have not hesitated to voice their criticism whenever the authorities exceeded their powers and have remained sources of strength in the safeguarding of individuals' rights [7].

With this general background in context, we shall now consider the introduction and operation of the Israeli planning system during the second stage.

A. THE MACHINERY OF PLANNING DURING THE SECOND STAGE

Planning machinery underwent several changes under the new law of 1965. The major institutions under the new statutory structure are illustrated in the following table.

:	:	The	:	Plan Making	:	Decision making	:
:	:	Subject	:	Institutions	:	Institutions	:
:	:		:		:		:
:	*	National	:	National Board	:	The Cabinet	:
:	:	planning	:		:		:
:	:		:		:		:
:	*	District	:	District	:	National Board	:
:	:	(regional)	:	Commissions	:		:
:	:	planning	:		:		:
:	:		:		:		:
:	*	Local planning	:	Local Commissions	:	Minister of Interior/	:
:	:		:		:	District Commissions	:
:	:		:		:		:
:	*	Development	:		:	Local Commissions/	:
:	:	control	:		:	District Commissions	:
:	:		:		:		:
:	-	- - - - -	:	- - - - -	:	- - - - -	:
:	:		:		:		:
:	+	Planning of	:	Special Commissions	:	Minister of Interior/	:
:	:	special areas	:		:	Minister of Housing	:
:	:		:		:		:
:	+	Planning of	:	Joint Commissions	:	Joint Commissions	:
:	:	joint areas	:		:		:
:	:		:		:		:
:	+	Protection of	:	Committee for the	:	Committee for the	:
:	:	agricultural	:	Protection of	:	Protection of	:
:	:	land	:	Agricultural Land	:	Agricultural Land/	:
:	:		:		:	Appellate Committee	:
:	:		:		:		:
:	+	Planning of	:	Territorial Waters	:	Territorial Waters	:
:	:	sea shores	:	Committee	:	Committee/	:
:	:		:		:	Appellate Committee	:

* Regular planning issues

+ Special planning issues

1. The Nature and Character of the New Machinery

The change in planning machinery is characterised by the "legalisation" of administrative bodies created during the first stage. Statutory planning institutions such as the Cabinet, the National Planning Board, the Committee for the Protection of Agricultural Land, and the special planning commissions are all rooted in the centralised administrative perceptions and practices of the past. Their transformation into statutory bodies was a means of raising their status and thus their effectiveness, overcoming the organisational problems evident during the first stage.

Not all of the old institutions were transformed into statutory bodies and the sectional planning units in government ministries and public agencies continued to operate. The non-statutory branch did not thus disappear. Though the law subjected all governmental development activities to the control of the statutory machinery, and the importance of the non-statutory branch was seemingly minimised, its role was sometimes greater than that of the statutory branch, particularly in matters of extraordinary national importance such as the replanning and development of the Negev in 1979-1980 after the Peace Agreement with Egypt and evacuation of Sinai [8].

In fact, beyond the scope of limited physical planning law, non-statutory planning institutions have continued to play an important role. Furthermore, since the Six Day War of 1967, a great national effort in land development has been taking place in the

administered territories outside the jurisdiction of Israeli planning law in which non-statutory planning agencies play an important part [9].

In conclusion, despite the changes made in 1965, statutory planning during the second stage remained only one part of a comprehensive system in which non-statutory agencies are still of great social, economic and political importance and, at times, even more effective than the statutory planning bodies.

The new statutory machinery was characterised less by its innovative approach than by its continuity with the past [10]. Planning decision making institutions at all levels were still dominated by the central government and the Mandatory type central government control over local planning, a control which fit well with socialist ideology and political reality, continued to prevail. Nonetheless, following previous tendencies, local authorities significantly increased their share in the planning machinery and those authorities which were politically and professionally equipped to initiate local planning were able to exercise considerable influence in the planning process.

Non-institutionalised public participatory planning remained very weak and planning in Israel was still imposed from above rather than encouraging public initiative. This reflected the general prevalence of representative over participatory democracy, though here too there was a tendency towards more representation of public organisations in planning institutions, which resulted in a greater

public awareness and involvement in the process.

The structure of the planning machinery (as well as other aspects of the system) still revealed signs of favouring the rural sector over the private sector, depriving the latter of significant participation in the decision making process. The public good was still regarded as related to rural ideology in Zionism, while private capital and profit oriented activities were often regarded as inconsistent with the public interest.

These characteristics are further elaborated in dealing with the various planning institutions, their structure, composition and functioning during the second stage.

2. Plan Making Institutions

a. The National Board for Planning and Building

At the top of the three tier structure of plan making institutions was the National Planning and Building Board. This Board was the successor to the non-statutory Supreme Planning Council. The statutory cloth given to this body can be seen as part of the general attempt to raise the status and thus the influence of planning institutions.

On the basis of accumulated experience in the functioning of the planning machinery during the first stage, the law prescribed in detail the composition, powers and responsibilities of this Board. In these the legislator showed its desire for a high-ranking, prestigious, pluralistic and effective body, capable of dealing with the onerous burden of national planning.

Pluralism The new law was innovative not only by creating the Board as a statutory body, but also in the wide and diverse membership aimed at achieving consensus among, and co-ordination between, the many forces operating in the field of planning and implementation.

The Board is composed of members who can be classified under five major groups: (1) Representatives of the Ministry of the Interior (which also has the chairmanship of the Board); (2) Representatives of executive government and public sector bodies; (3) Representatives of local authorities; (4) Professionals in matters of planning and physical development from both the government and non-government sectors; (5) Representatives of the general public [11].

Here the legislator attempted to provide a platform for broad participation in the preparation of national policy. The Board's composition includes national and local politicians, administrators, professionals and laymen, all representing a wide spectrum of points of view. Twelve different government ministries express the various

aspects of government fields of interest in planning. Local leaders from the big cities, towns and small urban and rural settlements present the views of different localities. Professionals from disciplines such as town planning, architecture, engineering, landscape architecture, sociology and environmental studies [12] provide a potential for inter-disciplinary planning, while there are non-official representatives of different social groups such as amenity groups, women's organisations, academic institutions and the young generation.

Many sectors wanted to be represented on this Board, either as a matter of prestige or simply to protect their interests. It is interesting that the demand for representation put forward by the private developers' association was rejected, probably due to the collectivist and anti-private sector attitude of the authorities which viewed this sector as conflicting with the public good [13].

High Ranking Body Effective operation of any social institution very much relies on the capability, status and influence of its members as individuals, as well as its composition as an entity. The legislator, in regard to the National Board, attempted to create a high-level body to meet the requirements of modern national planning and ensure its effective implementation. Members under the law include: Cabinet Ministers or their representatives (in practice, senior officials of the various ministries are appointed); heads of local authorities including the mayors (ex officio) of the three big cities or their deputies (in practice, the heads of the authorities are appointed); professionals in planning and building matters (in

practice senior government officials and eminent experts in their respective fields are appointed); and public representatives, usually by eminent public figures. It was hoped that a respectable composition of the Board would have the confidence of the Cabinet when it came to approving the Board's proposals and, even more important, the support of the executive bodies responsible for their implementation.

Division of Power Under the law, the Board has 32 members [14], of whom about one-third are central government representatives (politicians or administrators), one-third represent local authorities, and one-third are professionals from government and non-government ranks and representatives of public organisations.

Central government has the greatest share in membership, as well as the final say through its power of approval of the Board's proposals. However, as mentioned above, central government was not a homogenous body in this sphere, but was divided into various executive ministries and several government planning agencies. The creation of a statutory Board affiliated to, and under the chairmanship of, the Ministry of the Interior led to an improvement in the status of that Ministry within government circles.

Furthermore, the discretion of the Minister of the Interior to appoint various members of the Board was potentially an additional source of power and in practice this strongly affected the real powers of the Board.

The other ministries participating in the Board were not explicitly detailed in the law but were to be decided upon, from time to time, by the Cabinet.

Local authorities were well represented, reflecting the increased power of local institutions, not only in their particular localities but also in Israeli politics as a whole [15].

Experts in various fields concerned with planning were given an important role as members in their own right. In addition to professionals as members, the Board was allowed to appoint technical advisors on a permanent or temporary basis. The inclusion of so many experts in addition to politicians and administrators reflects the move from the pattern of improvisation in decision making towards a more modern and advanced concept of planning, requiring professional knowledge.

The public at large was represented under the law through a few members with full rights. These members of voluntary social organisations were not necessarily representative, nor unified in their approach, and being the smallest group on the Board their influence must be relatively small [16]. Nevertheless, the inclusion of such members reflected a move towards participatory planning in

Israel, with a potential for public opinion to play a direct role in the planning process [17].

The Board's Statutory Functions and Actual Functioning Under the law, the Board's functions were related to legislation, administration and adjudication. Section 2 states that the Board is "to advise the government as to everything relating to general policy in the implementation of this law, including matters of legislation, and to carry out other functions assigned to it by this law and by other laws."

Of the other functions assigned to it by law, the most important was the preparation of a national outline scheme to be submitted to the Cabinet for approval [18]. Other functions related to regional planning; i.e. the approval of district outline schemes [19]. In a few cases, the Board acted as an appellate tribune with regard to district commissions' decisions [20].

Though it was not explicitly mentioned in the law, an inherent task of the Board was to co-ordinate and integrate the planning of the various planning agencies to formulate a consistent national policy. This was of utmost importance in view of the experiences of the first stage.

In practice, this statutory body has not been more successful than its non-statutory predecessor. The Board was still identified with the Ministry of the Interior; thus its influence on government and public agencies was rather weak. As a result it took the Board a

considerable number of years [21] to reach agreement on the drafting of national schemes and to receive the Cabinet's approval. Even after such schemes had been given legal force, their implementation still required the co-operation of ministerial bodies and they remained open to interpretation by these executive agencies.

The functioning of the Board heavily depended on the professional capability and functioning of the Planning Department of the Ministry of the Interior. As the State Comptroller pointed out [22], "the Planning Department, centralising, as it were, the activities of the nationwide Board, has a pivotal role in the sphere of nationwide and regional planning". However, in his report for the year 1967 [23], the State Comptroller came to the conclusion that the "Department failed to act adequately in the sphere of nationwide and regional planning, or systematically and sufficiently to activate the local authorities with a view to furthering and accelerating the updating of revisions of local town planning" (sic). The Department's functioning has not significantly improved in the years since that report. Hence the capability of the National Board, both professionally and administratively, was often disputed by rival planning agencies, including those of the executive ministries [24]. This obviously downgraded the status of the Board and weakened the effectiveness of its operation.

The low status of the Board as a national planning institution can be illustrated by the example of the re-planning project of the Negev in 1979-80. This project resulted from the Israeli-Egyptian peace treaty of 26.03.79, in which it was agreed that Israel would

evacuate the Sinai within three years of the date of the agreement. Israel's defence forces had to be re-deployed in the Negev as a result. This was a very large-scale operation in Israeli terms. It involved tens of thousands of people, vast sums of money and tremendous physical development which had to be completed within a very short period of time. In addition, it was not just a matter for the defence forces. Since such development would have far-reaching effects on the future of the southern district and the country as a whole, the civil sector had to take part in the planning and implementation of this re-deployment.

In practice, this involved the construction of a new military infrastructure (e.g. airports, army barracks, roads) which would also be used in part by civilians; extension of the existing new towns to provide for the additional population; establishment of new rural villages for the populations of dismantled villages of north Sinai; and provision of new sources of employment and services.

A comprehensive (physical, social, economic and defence) plan was obviously required for this huge project. This was not carried out under existing statutory bodies (the National Board or the district commission), but by non-statutory ad hoc bodies [25]. The statutory planning machinery, although represented in these bodies, had to go along with the reality which was being spontaneously created.

The main body behind the planning and execution of this development was the Ministry of Defence. Each of the various

executive ministries contributed in its own sphere but, as the State Comptroller concluded [26], the civil sector lagged behind the military sector in planning, budgeting and implementation. The result was that unco-ordinated activity led to irreversible facts.

In other words, the National Board and indeed the rest of the statutory institutions were left aside and expected to adjust their schemes in view of facts which were created, without much chance of influencing them. The political affiliation of the Board to the Ministry of the Interior, and the inter-ministerial rivalry still dominant in Israel's administration, were the key elements in this state of affairs.

b. District Planning and Building Commissions

The second tier of planning institutions comprised the district planning commissions, operating in each of Israel's six districts. As explained, this administrative division of the country goes back to the early 1950's. During the second stage, this division was subject twice to review by government committees [27]. Both came to the conclusion that the existing division was obsolete in view of the physical changes in the country and the independent sectional organisations of "field administration" which many ministries had adopted. They concluded that the number of districts should be reduced to achieve more homogenous districts suitable, among other things, for proper regional planning. However, due to lack of political support these recommendations were not implemented [28].

District commissions had a composition similar to that of the previous stage [29]. The main changes followed the tendency towards increased share of local authorities and local people in the planning decision making process. The status of local authorities had grown steadily during the first stage and they often demanded the repeal of the old colonial type measures of control over their affairs by nominated bureaucrats of the central government. On the other hand, they were criticised for a lack of political maturity in the handling of their tasks and of over-politicisation in the exercise of their powers. Probably as a measure of compromise, the district commissions remained the main bodies in the decision making process in local planning, while representation of local authorities in these bodies was increased [30].

An additional member of the district commission was that of a professional planner who, by law, was not be an employee of either central or local government. This member was expected not only to add to the professional capability of the commission, which was dominated by administrators and local politicians, but also to express an independent opinion, thereby representing the general public [31].

Although the draft legislation had suggested a reduction in the number of district commission members [32], under the law the number actually grew to 15. Consequently the district commission became a platform for many institutional and factional interests and attitudes through both central and local government representatives. However, the final say remained with the central government by virtue of its majority in the commission. The general public had almost no direct

involvement, except in the traditional form of objections to planning proposals.

This broad composition of the district commission was a hindrance to efficient planning decision making. The law, therefore, provided for sub-commissions to deal with certain planning matters, hoping thereby to improve the functioning of the commission [33].

Statutory Functions and Actual Functioning. Among the new functions of district commission, the most important was the obligation to prepare a district (regional) plan, to be submitted for approval by the National Board [34]. The legislative powers to make by-laws were taken from the districts and vested with the Minister, so as to achieve a unified set of regulations for the country as a whole [35].

No significant changes were made in the other administrative and adjudicative functions regarding local planning. The district commission rather than the local authority remained, as during the Mandatory period, the main decision making body in the sphere of local planning. Accordingly, the law maintained the district commission's powers of supervision over the exercise of planning powers by the local commission.

In practice, very little was changed in the functioning of the district commission during the second stage. District schemes were rarely prepared, and there was almost no comprehensive regional vision guiding the process of planning decision making. The district

commissions were vested with so many duties regarding local planning that their ability to deal efficiently with the wider, as well as with the more specific, planning aspects has been very limited. The result, as the State Comptroller pointed out [36], has been a lengthy and inefficient decision making process. As a consequence, the commissions' functioning also influenced the growth of unauthorised building activity. Furthermore, their supervision of development control, as exercised by the local commissions, has been almost non-existent. As the State Comptroller remarked, they lacked the means (not to mention the political determination) for proper inspection and acted at random without any systematic control [37].

Considering the nationwide scale of unauthorised building activity, the State Comptroller suggested giving the National Board, rather than the district commissions, more powers and means to deal with the enforcement of planning laws [38].

c. Local Planning and Building Commissions

The third tier in the hierarchy of planning institutions was the local commission. In general, the structure of local planning areas, the composition of local commissions, their powers and their responsibilities were left unchanged by the new law. The Bill had proposed a reform of the composition of local planning commissions in municipal areas, whereby the local commission was not to consist solely of the municipal council, but was to be composed of both central and local government representatives, together with some representation of the local public [39]. In other words, the proposal

suggested a return to a structure similar to that which had existed under the early Mandatory period. This proposal, backed by the planning profession, was a reaction against the over-politicisation of the planning process by the local commissions, and against manipulation of statutory powers for local factional interests. However, with the rapid process of urbanisation in Israel and the growing political influence of the local authorities, the attempt at such a fundamental change failed.

On the other hand, the previous composition of local commissions, particularly with regard to small towns and neighbourhoods, continued to entail central government representation, and though they were made members only in an advisory capacity [40], two of these representatives could appeal jointly against the local commission's decision to the district commission [41].

During this stage the fragmented and outlined division of local planning areas also remained the same. Not only was no attempt made to reduce the number of local commissions, but their number actually increased [42]. In view of the growing political strength of local authorities, no authority would have agreed to surrender its planning powers, so that a proposal to reduce the number of commissions would have failed anyway. On the other hand, central government still did not want to loosen its control over the local authorities. The result was a stalemate in the structure of local planning commissions.

By comparison, in England the 1970's saw major reforms in local government which also affected town planning powers. These came about after a series of reports on issues relating to local government [43]. Under the Local Government Act 1972, a two tier structure of county and districts was introduced, involving the amalgamation of a host of small authorities [44]. Furthermore, the complexity of environmental problems led to the introduction of a corporate management system and overall policy planning in local government [45]. Although these changes did not pass without criticism [46], they did show a degree of open mindedness and readiness to make an effort to produce a more efficient governmental system.

The local government system in Israel was also reformed in the mid-1970's [47]. The main innovation was the provision for direct and personal election of mayors and council chairmen. However the organisational measures which the new law introduced were of far less importance for the local planning process than those in England [48].

The organisational changes introduced by the Israeli planning law were the establishment of a special planning sub-committee within a municipal council and the division of tasks between it and the full quorum of the municipal council [49]. A more substantial change can be seen in a new provision which enabled the local commission to delegate its development control powers to the chairman of a local commission, together with the city Engineer [50]. In such a case, these two people could grant or refuse planning permission, subject to the provision of the statutory scheme. Such exercise of

development control by an elected member and a professional planner may appear to be a good solution. However, in the political context of the Israeli planning system, whereby this could deprive the other members of their source of influence, this procedure was hardly ever employed [51].

As mentioned, in town planning areas which include territories of several local authorities, the old composition of local commissions (i.e. a combination of central and local government members) remained largely unchanged [52]. This reflected, to some extent, the difficulties of small settlements to deal professionally and efficiently with the issue of modern planning. Due to their political weakness they were not allowed aid, except in the form of central government patronage. This type of local commission was sometimes chaired by the District Commissioner or his representative, and its members were nominees of the Minister of the Interior, chosen from candidates recommended by the various local authorities. Two of these nominees were not to be members of local councils, thus safeguarding some representation of the non-establishment local public. Here the legislator passed a provision which had been rejected in the cases of other planning institutions, whereby the Minister could replace his nominee "if he sees a reason justifying this" [53]. This is an important provision which, in political terms, could give the Minister a tool for indirect control over the way members exercise their power. This provision was introduced only in regard to this commission probably due to the lack of political pressure to the contrary.

The influence of rural ideology on the statutory construction of local planning commissions is noteworthy. While dealing with the designation of local planning areas, the legislator prescribed that a Minister's order which declares a local planning area shall not include the territory of a Regional Council (i.e. a local council which consists solely of the rural sector, Kibbutzim and Moshavim,) with "areas of a local council other than a regional council or of a Municipality" [54]. The separatist attitude of the rural sector and their anti-urban attitude was, it is argued, reflected in this provision.

Statutory Functions and Actual Functions. Local authorities' functions remained mainly in the sphere of planning initiatives and the exercise of development control. The law re-affirmed the obligation of the local authorities to prepare an outline plan and in addition prescribed a maximum period of three years from the date of the law coming into force to complete the plan [55]. This differed from the previous provision which, although it made the preparation of such schemes obligatory, left the time in which to do this to the discretion of the district commission [56]. This measure was designed to accelerate the preparation of outline schemes, which had been very poor during the first stage [57].

Detailed schemes could be initiated by the local authorities themselves or adopted from the scheme of a private individual [58].

The process of scheme preparation remained highly politicised in the area of factional politics, were lengthy and inefficient, and the preparation of outline schemes was rarely completed before the legal date. Though there have been great improvements in the preparation of updated outline schemes in recent years [59], some of the most important areas still lack such schemes [60]. On the other hand, there have been an abundance of small scale schemes, reflecting the market pressures for actual development.

Development control powers of the local commissions included existing aspects of planning permits and law enforcement. The new law followed the general tendency to increase the powers and raise the status of the authorities; it granted local commissions wider discretion to deviate significantly from an approved scheme by means of giving (in some cases without further approval) special building permission called "relaxation" and "non-conforming use" [61]. Though this was aimed at providing a measure of flexibility in planning, these special permissions have been used extensively for political purposes and are used as bargaining instruments between the authorities and developers.

More stringent provisions were introduced for law enforcement, enabling the authorities to combat unauthorised building activity more efficiently. Despite this, law enforcement remained extremely weak during this stage and, though several times the High Court of Justice [62] and the State Comptroller [63] were forced to criticise strongly the local commissions for their exercise of development control, the situation was not improved.

d. Special Planning Institutions:

Special Commission and Joint Commission

Frameworks for two new institutions were designed as a result of the experience of the first stage. These bodies were the "special commission" and "joint commission".

A Special Commission could be established on the initiative of the Minister of Housing in areas where the government or the public sector intended to carry out major physical development for any of the following three cases: (1) building a new town, (2) consolidation of an existing "new town", (3) development of new neighbourhoods within any type of settlement [64].

During the first stage there had been organisational chaos in regard to the establishment of new towns. No clear rules had been set up for their planning and, as a result, planning initiatives, procedures and their implementation were determined by different government bodies, varying from one case to the next. The subsequent transfer of planning responsibilities to the local population had been determined quite arbitrarily.

Since government development was subject to the new law, an attempt was made to provide a unified planning body for the task of extensive public development.

The special commission is a compact body, smaller than a regular district or local commission, yet with the powers of both these institutions for a maximum period of five years [65]. It is dominated by central government representatives, with only four local authority representatives [66]. Ostensibly the introduction of such a body is a measure of efficiency, providing considerable relaxation in the lengthy procedures involved in passing through the regular machinery.

The creation of a special commission to replace the regular institutions may also be seen as a method of appeasing the governmental public executive agencies after having subjected their activities to the rule of the regular statutory machinery and including the rule of local authorities. In this respect, the law provided them with some privileges in cases of large public development projects.

Such has been the potential use of special commissions for the creation of new towns. This use remained theoretical during this stage, since no new town was actually been established in territory under the jurisdiction of Israeli law [67]. The special commission was also a theoretical institution in cases of establishing single neighbourhoods in existing towns. In practice, when the government planned such neighbourhoods, it often used the regular institutions and procedures rather than declare the neighbourhood a special planning area.

The special commission was utilised in existing new towns where public construction continued for purposes of extension and consolidation. In such cases the entire town was declared a special planning area and a special commission set up. This ensured central government control over planning decisions at local level by virtue of public investment in these new towns. Since the local people were under-represented in such commissions, this statutory body can be regarded as an instrument of central government patronage, enabling control over local institutions and the population of new towns and maintenance of the traditional dependence of new towns on the government.

The Joint Commission was suggested in the final stages of the Mandatory period [68]. This measure was a potential for achieving more co-ordination and thus efficiency in dealing with territories and comprehensive issues concerning more than one district or local area [69]. This measure followed the lines expressed in the Association of Towns Law 5715-1955 [70]. However, in view of the fragmented geographical division of districts and local areas, and the difficulties in creating greater bodies through amalgamations of existing institutions, joint commissions have been largely ad hoc bodies for solving problems in the border areas between neighbouring authorities.

e. The Statutory Committee For the Protection of Agricultural Land

This body was the legal institutionalisation of the non-statutory body operating during the first stage [71]. Its creation was linked to the prevailing rural ideology, as well as to Israel's economic needs, as described above. It entailed a two-tier structure of first instance committee and appellate committee while its composition gave strong representation to central government ministries and the rural sector and only one representative to the urban sector [72].

This body was organised with the National Board, staffed largely by members of that Board and hence allowing implementation of national policy at local levels.

The powers of this committee relate to the safeguarding of agricultural land against urban sprawl and it exercises supreme power of development, above the regular planning machinery. In other words, any land which is declared agricultural land by the committee cannot legally be apportioned for other uses in any scheme or planning permit unless the committee gives its consent [73].

Urban growth on the periphery of the main cities is thus largely under the control of this joint committee. In addition, the committee may decide to suspend, repeal or alter approved schemes which provide for building on agricultural land as long as the actual development has not taken place [74].

However, as the State Comptroller pointed out [75], there is a considerable gap between the committee's formal powers and its actual use of these powers. In practice, agricultural land has often been used for other puposes without the consent of the committee; moreover, no action was taken by the authorities to stop such development. Nonetheless, compared with the first stage, the legal status and statutory powers granted by the new law considerable improved the implementation of the policy of protecting agricultural land.

3. Decision Making Institutions

a. The Cabinet as a Planning Decision Making Institution

The new law gave the Cabinet as a whole the power to make the final decision concerning national plans. This procedure, which also existed during the previous stage, was very reasonable since the ultimate responsibility for Israel's planning lay with the elected government and officially the government was the ultimate planning authority.

The maintenance of this procedure as opposed to vesting the ultimate power with the Minister of the Interior (who is responsible for the implementation of the law) or with the National Board, fitted well with the logic of the new structure of the planning machinery where the Minister of the Interior was formally the chairman of the National Board [76] and therefore could not be above the body of which he was a member. Further, if the Board were to be the ultimate decision making body, this would mean subjecting the central government to a body including a majority of local authority representatives and nominated members. Hence the procedure which left the ultimate decision with the Cabinet was the best of all alternatives.

This structure also reflected socio-political reality in Israel. Placing the Cabinet as the ultimate planning authority was designed to achieve effective planning. A combination of political (Cabinet) approval and legal backing (statutory schemes) seemed necessary if plans were to be accepted by the various ministries, public agencies, local authorities and the general public. It is true that since the law imposed the regular development control processes on government physical development activities, the problems of inter-ministerial rivalry which led to inconsistent planning were formally resolved by the supremacy of the statutory planning machinery (affiliated to the Ministry of the Interior) over the other government and public sector planning agencies. However, the reality

was very different, even in the sphere of regulative planning. At times, the executive ministries ignored the statutory procedures and created "established facts" in land development.

For example, development of the Tel Aviv beach front was fostered jointly by the Ministries of Finance and Tourism, together with the support of the Municipality, at times of vacuum in the statutory planning policy, because the relevant statutory outline scheme was only in preparation. The big hotels which were erected as part of this controversial development project became "established facts" with which the eventual scheme had to reckon.

Worse, the development of the Omriya area of Jerusalem by the Ministries of Housing and Tourism took place in contradiction to the Jerusalem statutory scheme [77].

In the sphere of positive planning, where co-operation between the executive agencies was required for implementation, the political struggle between the different ministries and public agencies still dominated the scene. For plans to be realised, the political determination of the Cabinet as a whole and legal seal of the schemes was not always sufficient. In this respect, the situation during the second stage was not much different from the first. Positive planning was still dispersed among various agencies and co-ordination was weak. Consistent policy of positive planning at a national level barely existed.

b. The Minister of the Interior

Despite a growing awareness during the second stage of environmental issues, no Ministry was established to deal exclusively with the many inter-related environmental policy aspects. The political structure of a coalition government in Israel limited the changes for reorganisation of central government.

Among the Cabinet Ministers, the Minister of the Interior remained in charge of general implementation of the law. However, with the growing involvement of other Ministries in the planning process, this Minister was but one of many with statutory powers under the new law.

Most of the tasks of establishing planning institutions was in the hands of the Minister of the Interior. In this way he was able to influence indirectly the end product of the planning machinery. Though in some cases the law limits the Minister's discretion to appoint members to planning commissions, it still leaves him with wide powers to decide who fills crucial posts, such as the Chairmanship of the National Board, its professional planners, and membership of the district and some local commissions [78].

Nevertheless, the Minister can be held only nominally responsible for Israel's national and regional planning policy. As he only appoints some of the members of the National Board and as national schemes are approved by the Cabinet as a whole and district

(regional) schemes by the Board, his directly responsibility is doubtful. He cannot, for example, give substantive guidance to a plan making institution as such, but merely to his representatives who are often a minority on the commission. In this respect the legal situation is very different from most cases of ministerial responsibility; for instance, it differs from the responsibility of the Environmental Secretary in Britain, who is in charge of implementing the law and thus has the final say under the town planning legislation.

The Minister of the Interior does have other legislative, administrative and adjudicative powers with which he can influence more directly the planning process and its products.

It is the Minister who devises planning and building regulations. These regulations concerning procedural and substantial planning matters are usually of universal application, though the Minister can also make regulations for a particular district or locality [79]. The important task of subsidiary legislation was thus taken from the district commissions and vested, as with most laws, with the Minister responsible [80].

Unlike his position in the first stage regarding local planning, the Minister of the Interior became the supreme authority only in regard to schemes which propose to change, suspend or repeal local outline schemes. This arrangement was rather peculiar in the context of the new law, since it created disymmetry in the structure of the planning machinery. As the regular planning institutions were

built on a three tier structure, it might have been more logical to vest the responsibility for local planning as a whole with the district commissions or with the National Board. The National Board rather than the Minister could have ensured more consistency between national and local planning [81]. Nevertheless, decision making powers were distributed among several institutions, and the Minister of the Interior got his share, enabling him to exert direct influence also on local planning levels, where political and social groups and individuals showed great interest.

By comparison, in England the growing attention paid to environmental issues led to a major central government reorganisation in 1970, under which the Department of the Environment was created [82]. This Department, unlike the Israeli Ministry of the Interior, was vested with the responsibility of framing national policy, together with control over some implementation agencies. It was originally based on the old Ministries of Transport, Housing, Local Government, and Public Building and Works [83]. In matters under his responsibility, the Secretary of State for the Environment was directed towards producing consistent government planning and development activity in some of the inter-connected aspects of the environment. However, it has only been a partial solution since other Departments, such as Trade and Industry, still maintain responsibility for issues which are fundamental to urban and regional planning [84]. Considering that the English system lacks a formal inter-departmental institution for the formulation of co-ordinated national policy and for integrated implementation, the position of

the Department of the Environment as the supreme planning institution is highly dependent on the political backing it receives from the government.

By contrast, the Israeli statutory system, which provides for a National Planning Board under the chairmanship of the Minister of the Interior, is - at least on paper - more advanced. Yet experience has shown that political backing is often much more important than the official statutory co-ordinative institution per se.

B. PLANS, POLICIES AND PRACTICE DURING THE SECOND STAGE

1. Statutory Schemes

Under the new law the hierarchy of schemes was structured in four tiers: national, regional (which relates to districts), local and detailed [85]. It was based on the deductive principle, which means that plans are prepared on the basis of working from the general to the particular. The national outline scheme was concerned with the whole (geographical) area of the State. Each district outline scheme provided the details necessary for the implementation of the national scheme in the district. Local outline schemes for each local planning area elaborated on the district scheme with regard to their area. At the lowest level, the detailed scheme went into precise particulars regarding a section of a local area. Planning permission in Israel was not, in principle, an additional tier in the creation of plans, but merely the first stage in planning implementation. It must therefore adhere to approved schemes.

The plan making process envisaged by the law was thus a sequence of four types of plans. In theory this meant that each plot was to be covered by four plans at increasing levels of generality. In practice this was not achieved. The law itself did not even provide for the establishment of the full structure. First, plan making was made compulsory only at two levels, the district and the local. The preparation of a national plan and detailed plans was discretionary. Second, even if the preparation of plans at all levels

were assumed to be obligatory, the statutory timetable for the preparation of these schemes makes it unrealistic. The requirement for district schemes to be prepared within five years of the law coming into force, together with the requirement that they should elaborate the national scheme, could not be fulfilled unless a national scheme were to be prepared in a much shorter period of time. Again, the requirement for local schemes to implement the district scheme could not be carried out when the former has to be prepared within a period of three years, while the latter had a five year period in which to be submitted.

In addition to the legal anomaly, the long delay in the preparation of schemes while interim decisions were being made resulted in a completely different process of scheme making than that envisaged by the law. National schemes were few and far between during this stage. They barely provided any guidelines for the lower level planning. District schemes, save the case of the district of Jerusalem, were non-existent. Local outline schemes were begun to be prepared systematically only in the late 1970's, and in view of the rapid development were often out of touch with reality. Amendments to outline schemes did not stem from comprehensive re-planning, but rather constituted sectional changes. Detailed schemes too covered only limited parts of the municipal area, providing merely for specific development projects [86].

The result of the above was that links between the four tiers, as well as between schemes of the same tier, were very weak. Schemes were often prepared independently of one another, hence the

inconsistency in the plan making process. Furthermore, the gaps in scheme preparation led to a patchwork of old and new schemes and an incomplete structure of planning. Consequently, the plan making process was generally an attempt to catch up with actual development rather than a preliminary guide to market forces.

However it should be mentioned that the introduction of the statutory four tier structure had many advantages. On the one hand, it was a reflection of the growing awareness of the importance of planning on a larger than local scale, and on the other it acted as a catalyst to the actual engagement, though still at a low tempo, of multi-level planning.

The Form and Nature of Statutory Schemes The law did not define "planning", nor did it give an adequate definition of the word "scheme". What it did was to prescribe lists of subjects to be dealt with by each of the four types of scheme, leaving the way they were to be dealt with to the discretion of the authorities. The main drawback of this is that the general principles of a strategic nature were concealed in a host of detail. Thus the issues which appeared in regard to the top tier of the national scheme were basically similar to those appearing all along the structure, down to the detailed scheme. In this way the borderline between minute control over local projects and the formulation of a wider national policy was not explicitly laid down in the provisions of the law [87]. Again, the

national scheme could, by implication, deal with a matter which was basically a subject for a detailed local scheme [88].

The pattern of lists of physical subjects for which land was to be assigned was based on the way the Mandatory legislation had conceived the scheme in the 1930's. Thus despite the replacement of the primary planning legislation by a new law, the old regulations which prescribed technical guidance as to the preparation of maps (plans) were maintained [89].

The concept of a scheme as a fixed and rigid picture of future physical development based on maps and written regulations was not only continued in regard to local level planning, but was also applied (in general) to the level of national and regional planning. The old legislative perception of a scheme as a tool for prescribing normative provisions in the environmental sphere, particularly in the area of development rights, remained the dominant perception in Israel [90]. It is thus asserted that the English-type structure plan, mainly aimed at the establishment of general planning policies, differs fundamentally from the Israeli outline scheme. Despite the wide discretion given as to their form and content, it would be mistaken to interpret the intention of the legislator as covering this type of scheme. The following grounds are given to show that structure plans do not fit into the notion of planning as developed under the Israeli system.

First, a plan concentrating merely on general policies would be regarded in Israel as too theoretical, abstract and merely an expression of wishes. The old-established and still prevailing sense of pragmatism in Israel means that policies are expected to be applied "in the field". The old fixed and rigid type scheme which, in theory, is more suitable for ensuring certainty in the system, corresponds to the expectations and desires of the executive agencies and the public at large.

Second, the formulation of general planning principles inevitably results in bitter conflicts between social groups who differ in their ideologies, values and interests. Since the early days of Statehood, attempts have been made to evade this type of in-fighting. One notorious example of this evasion was the attempt and failure to formulate a constitution for Israel. Though national physical planning is of a much more limited scope, formulation of such planning policies in a legally binding form runs the same risk of endless controversy. This is just as true of any attempt to formulate general regional and local planning principles.

Third, a structure plan is bound to vest much greater discretion with local authorities in the application of general principles of particular schemes and development control decisions. Considering the current Israeli political situation, central government would not allow such delegation of power while few local authorities would be able to bear such responsibility.

While the above illustrates why, beyond any legalistic interpretation, a structure plan is alien to the existing Israeli planning system, it should be added that a conceptual change in the system towards structure planning is not undesirable, at least at national and regional levels. Furthermore, in view of the gap between statutory concepts of the four tier structure and actual reality in scheme making, it is clear that existing statutory schemes have not served their purpose. Instead, discretionary powers have been used, without any strategic guidelines or clear long-term policy but in accordance with short-term needs and interests. This situation, while enabling greater flexibility, certainly lacks the desirable certainty in the system.

Contrary to the view expressed here, an assertion that the existing statutory outline schemes could, and should, be used in a similar way to that of the British structure plan is expressed by Rachel Alterman in her article "The Planning and Building Law and the Local Plan: A Rigid Regulation or a Flexible Framework?" [91]. This article recently influenced a new ruling by the High Court of Justice. In HCJ 40/80 Tieg V Haifa District Planning and Building Commission [92], Justice Tirkel adopted in general the views of Alterman. He expressed his opinion that outline schemes should incorporate planning policies and principles, and thus provide the flexibility needed for dynamic planning. He went on to say that planning commissions may, and should, take into consideration social, economic and ecological objectives, as well as those of physical land use. However, Tirkel's view was merely an obiter dictum and thus

only part of the debate on the nature, character and scope of statutory planning in Israel.

2. The Policy of Population Dispersal During the Second Stage

The policy of population dispersal during the second stage continued to be the leading policy in Israeli planning. The geo-political, ideological, social and economic objectives of this policy were still valid, since the first stage had produced only partial success in terms of a balanced development of the country as a whole. Though it was clearly a policy of the utmost national importance, the legislature did not prescribe it as binding as he did, for example, in regard to the policy of protection of agricultural land. Section 49 stated:

"The national outline scheme shall lay down the planning for the whole of the area of the state and inter alia ... (7) make a forecast of changes in the distribution of the population of the State; determine the stages in which those changes should proceed and the desirable timing of those stages; estimate the future size of existing settlements; and determine the location, type and size of new settlements."

As this sub-section shows, the content of the policy of population dispersal was left totally to the discretion of the authorities. The law did not provide an outline for the universally accepted objectives of the wider development of the northern and southern districts and the halting of further growth in the coastal districts.

The legislator did not clarify the meaning of "forecast" and

"estimate" in that sub-section; even more ambiguous was the term "desirable timing". It would seem reasonable to assume that, since planning is more than merely the submission of information regarding a projected population, the statutory "forecast" and "estimate" would include elements of guidance. Yet the nature and scope of such guidance is not defined in the law. All that can be gathered from other parts of the law is that the legislator shows a rather conservative approach in planning by expressing it almost exclusively in physical terms. Yet the wording of the above-mentioned sub-section, which is somewhat exceptional, could give some leeway for socio-political and economic considerations, since without such a comprehensive perception of the physical, social and economic factors, national planning could not live up to its name.

As for the actual tools for achieving the objectives, it is doubtful whether the means prescribed by the statutory scheme for the accomplishment of the policy of population distribution could be other than physical land provisions.

In practice, the first [93] - and so far the only - statutory scheme for population dispersal was approved in 1975 [94]. Its preparation by the Physical Planning Department of the Ministry of the Interior in collaboration with the Economic Planning Authority of the Ministry of Finance, the Housing Ministry, the Ministry for Government and Industry, and the Joint Center for Rural Planning gave hope for a comprehensive and unified government policy. The scheme forecasted a population of five million by 1992.

The National Board laid down the basic principles upon which the scheme was to be prepared. The Board explicitly stated that a balanced distribution of population throughout the country should be considered in accordance with security and economic requirements, the social objective of absorption of new immigrants, consolidation of the rural sector, and the protection of agricultural land and the national landscape.

These considerations underlay the core of the scheme, which is a detailed numerical table of the future growth of population in each district and local area. However, they also led to the formulation of general aims and strategies, broader than those of traditional physical land use planning. This statutory national scheme thus came much closer to the British-type Structure Plan than any other scheme prepared under Israeli law.

This statutory scheme re-stated the general aim of population dispersal through an increase in the Jewish populations of the Galilee, Negev and Jerusalem, while special emphasis was put on the consolidation of the existing new towns. At the same time, the scheme proposed to restrict the growth of the coastal districts of Tel Aviv, Haifa and the centre.

The scheme listed three groups of measures to be used to achieve these objectives. The main problem, however, was that these were not clearly defined or expressed as binding policies.

The first group, classified under physical planning means,

included the exercise of control over statutory national, regional and local schemes, thus ensuring their consistency with the above objectives; utilisation of the statutory powers for the protection of agricultural land, thus restricting urban growth; and a broad policy of restrictive planning and development in the coastal and central districts. These measures were within the boundaries of the statutory planning system and, in theory, at the disposal of the planning machinery.

However, the scheme continued to list broad economic measures which are generally outside the realm of physical planning but within the powers of the executive bodies. The scheme recommended distribution of industry and employment in accordance with the national preference for regional development; allocation of greater resources to the outlying regions, construction of transportation and public housing in accordance with the scheme; improvement of the standard of living in the development regions through improved educational and cultural facilities and health services; government grants and loans to local institutions and individuals, and so on.

Thirdly, the scheme recommended administrative reform at government level to ensure greater coordination and efficiency in the working of government and public bodies. These measures also lacked definition.

As mentioned, the inclusion of socio-economic-administrative strategies were not so much changes in their status but merely recommendations. They cannot be considered as binding policies; in

this respect, too, the actual position under the scheme is similar to that in Britain where, as Jowell and Noble conclude [95] "despite the recommendations of the Planning Advisory Group, and the desired shift towards broader criteria and a 'corporate' element in planning, the Department of the Environment have not been willing to see social and economic factors reflected in concrete policies and proposals in structure plans".

In practice, there has been very little ministerial coordination; the executive ministries generally act in accordance with their own policies, rather than in accordance with this national outline scheme. Furthermore, the scheme has had only little effect on the lower physical planning levels, as exercised by district and local commission. This reflects the continued political weakness of the Ministry of the Interior in comparison with the executive ministries. Planning was still regarded as the enterprise of physical land use rather than a comprehensive inter-disciplinary activity. In this respect, the allegedly big change introduced by the new law was non-existent, as were the supposed differences between the new scheme and previous non-statutory plans in practical terms of implementation.

It should be stressed that in a democratic state a forecast distribution of population cannot be totally guided and controlled. The setting up of population targets for individual localities means, in practice, guiding lower level planning (district and local schemes) so as not to exceed the prescribed targets. This forecast is also supposed to act as a guide for the executive ministries and

public agencies as how to allocate public developments in order to attain these targets. Influencing the individual as to the place in which he chooses to live has obvious limitations which are rooted in the democratic nature of the State.

A comparison of population dispersal in Israel in 1966 and the end of 1981 gives the following picture [96]:

Administrative District -----	PERCENTAGE POPULATION			
	1966		1981	
	Total Popul.	Jewish Popul.	Total Popul.	Jewish Popul.

Central Area:				
Tel Aviv	30.6	34.3	25.2	29.9
Haifa	16.5	16.1	14.3	14.0
Central	18.2	19.1	20.3	22.4
	-----	-----	-----	-----
	65.3	69.3	59.8	66.5
Peripheral Area:				
Jerusalem	8.5	9.4	11.5	10.1
Northern	15.7	10.2	15.8	9.7
Southern	10.5	10.9	12.2	13.1
	-----	-----	-----	-----
	34.7	30.5	39.5	32.9

The table shows modest achievements in the population dispersal population between 1965 and 1981. In view of the gap between policy and practice, it appears that planning surrendered to those market forces dictating the growth of the metropolis. Furthermore, in the political reality of Israel with its inherent pattern of unco-ordinated government activity, neither centralised nor statutory planning has been able to achieve fundamental changes in the population distribution. The attractions of the large major cities

have always proved too great to combat, and to do so by means of the existing new towns has been especially difficult. National planning, as the planners themselves admit, has moved from the objective of population dispersal to a mere attempt at improving the standards of living in outlying districts [97].

Difficulties in the statutory policy of population dispersal have been particularly evident in developments in occupied territory since the Six Day War of 1967. The development of Jewish settlements in these areas have been determined by political and defence considerations. Since vast financial and manpower resources have been invested in the new areas, this affected the development of the old districts.

Developments in the occupied territories (save in the areas of East Jerusalem and, since 1981, in the Golan Heights which were brought under the jurisdiction of Israeli law) are outside the realm of the Israeli statutory planning system. Since the statutory scheme of population dispersal could not include these occupied areas, the gap between Israel's statutory planning and actual development remained very wide.

3. Consolidation of the Rural Sector

And Protection of Agricultural Land During the Second Stage

As mentioned, the rural sector as a social and economic branch and as a settlement agency is still very powerful in Israel, though it lost much of its previous power and status in the second stage due

to social and economic changes.

Israel's rural population declined from 18.2% of the total population in 1965 to 13.1% in 1981. The Jewish element in this sector declined from 11.6% to 9.7% during the same period [98]. Limited arable land and water on the one hand, and technical progress in production on the other, allowed only a minimum extension of agriculture as a source of employment. The proportion of people employed in agriculture decreased from 7% in 1965 to 6.1% in 1981 [99].

As a result, the rural sector gradually introduced industries to its villages. During the second stage, this sector also developed new experimental forms of settlements, such as purely industrial villages, community settlements, observation settlements and uninhabited service centres [100]. The rural sector has also been instrumental in the settlement of areas of security and political importance [101].

Under the law, the location of rural (as well as urban) settlements, their size and type are all subject to national and district schemes [102], but in practice the planning institutions lack the political strength to dictate the allocation of settlements to the rural sector. Inter-ministerial rivalry still makes the process of rural planning an area for factional interests. While a national scheme for the location of settlements was under consideration in 1979, it is not yet completed [103]. District schemes barely exist and also cannot be regarded as effective tools.

The executive ministries and the Jewish Agency still hold the key position in these matters.

The new legal provisions for the protection of agricultural land were of much greater significance. Unlike other planning policies developed in the first stage, the policy of protection of agricultural land received explicit expression in many sections of the law. The particular body set up solely for this purpose with the power to veto planning decisions involving agricultural land has already been mentioned. In addition, the legislator made it clear that in the preparation of schemes agricultural use of land should be favoured over other uses.

For example, among the provisions to be included by the National Outline Scheme is (Sec. 49(1)) "to prescribe the purposes to which land shall be assigned, and the use thereof, while safeguarding the assignment to agricultural purposes of land suitable therefor."

District schemes are to be submitted to the National Board accompanied by a map (Sec. 60) "showing the character of the land comprised in the scheme from the point of view of agricultural exploitation."

Among the objectives of the local outline scheme as prescribed by the law is (Sec. 61(1)) "to control the development of the land in the local planning area, while safeguarding the assignment to agricultural purposes of land suitable therefor" [104].

These expressions show a strong tendency towards rural ideology, though it is true that the economic factor played a significant role in the designation of these legal provisions. By the mid-1970's it was found that arable land per person was 1.4 dunams, while the area required for the supply of agricultural production was a minimum of 3 dunams of arable land per person [105]. However, market pressures for the use of agricultural land for building have been enormous and more and more arable land has been released every year by the committee. Furthermore, agricultural land is often neglected around the towns because of the chances of having its use changed [106]. All this adds to the evidence that legal and administrative tools can be used properly only with political support and suitable economic conditions.

The tools and policy of protection of agricultural land were also regarded as instruments for the policy of population dispersal. By limiting the growth of towns in the coastal plain, the authorities were attempting to redirect development into the north and south. This again met with only partial success and the effect of this policy on land prices in the central towns was much more significant than on population dispersal.

4. The Dispersion of Industry during the Second Stage

As explained, the rapid process of industrialisation during the first stage is also connected with a change in attitude as to the needs of a modern state, and the policy of distribution of industry

continued to be of utmost importance as part of the population dispersal policy. However, as with its parent policy, this branch was also not explicitly expressed in the law.

Section 49, which gives a framework for a national scheme, provided that such a scheme shall [107] "set aside industrial zones and areas for the production of minerals" and [108] "designate places for public enterprises and purposes of national importance."

District outline schemes could include provisions as to "different classes of industrial zones" [109] and, similarly, local outline schemes could set aside zones for industrial as well as other purposes [110].

These are merely regulative tools for the industrial dispersal policy. The much more substantive aspects of social and economic incentives for industrialisation were not included in the law but remained in fact the responsibility of the economic ministries.

In practice, planning agencies did not use even the physical planning tools mentioned above (map-based indication of industrial centres throughout the country). For example, the statutory national scheme of population dispersal of 1973 took into account the forecast of industrial development on a national and regional basis. Yet it provided no more than a table of the distribution of employment in industry (as well as in other branches) in the target years (1981, 1982). More practical means for positive industrial development were outlined merely as recommendations for the executive ministries.

Another national scheme which is more relevant to the realisation of the industrial dispersion policy is now in preparation. This is a scheme for the location of unneighbourly industries, which might impose restrictions on the operation of industries in the central areas, thus forcing them out to outlying districts [111].

It may be concluded that statutory tools were of almost no importance in regard to the dispersion of industry during this stage. Regulative means continued to be considered separately from positive means, minimising their effect.

The actual process of industrialisation in Israel during the second stage resulted in the following figures. In 1965 the share of industry in the GNP was 26.5% and 23.5% of the total labour force [112]. There were 7,182 industrial enterprises [113], and industrial exports made up 80.5% of the total export of goods. In 1980, industry had 35.5% of the GNP and employed 23.7% of the labour force. Its share in total export of goods rose to 89.5% [114].

When industrial growth is viewed through the lenses of the industrial dispersal policy, it can be seen that the share of the peripheral districts in total industrial employment grew by nearly 10% from 21.9% in 1965 to 31.4% in 1978. During the same period, the population of those districts grew by less than 5% [115]. This is a clear indication of the important contribution of industry to employment in these districts and to the population dispersal policy.

The development of industries based on the Negev's mineral resources, and the branches of petrochemical and metal industries, were the main sources of additional industry in the peripheral districts.

Industrial development in the coastal and central districts was even more impressive during the second stage. Employment in industry in these districts stood in 1978 at 68.6% of the total industrial employment [116]. This last figure shows that the forces against geographical distribution of industry were in fact greater than those of pro-distribution.

5. Slum Clearance and Renewal Neighbourhoods

As described, the years of the second stage witnessed a shift of emphasis from the problem of physical existence and national security to domestic problems and the quality of life. With the economic prosperity which followed the Six Day War, the socio-economic inequalities between different sections within Israeli society became extremely marked. This posed a serious threat to the country's social stability and national unity and led the government to redefine its social and economic policies. Among these was its approach to the problems of the communities, mainly of oriental origin, living in slums in the big cities or in distressed neighbourhoods in new towns [117].

With this problem in mind, the Rehabilitation Zones (Reconstruction and Evacuation) Law 5725-1965 [118] was promulgated, in addition to the new planning law of the same year. This law's

objective, as stated in the Bill's explanatory note, was to provide the legal tools for clearing existing slums and preventing deterioration of additional neighbourhoods. The new tools were aimed to help the authorities overcome the difficulty in negotiating with the evacuees. In several respects this law resembled the planning law. It focused on the early stages of slum clearance, including the determination of areas requiring regeneration, making of new plans, expropriation of land and evacuation of the population. Further stages of positive implementation, in the sense of redevelopment and resettlement, were not statutory issues, but were left to the initiative and discretion of the authorities. The ideology of representative democracy and public administration clearly underlined this law.

The law established a national body, the Authority for the Reconstruction and Evacuation of Rehabilitation Zones, which was almost identical to the National Planning Board [119]. This Authority was to be chaired by the Minister for Housing (or in practice by his representative) and consist of a number of ministers (in fact government officials), professional experts in housing, local government politicians, and two appointed members of the general public.

The Authority's functions were to declare Rehabilitation Zones, to prepare new schemes for these areas, and to co-ordinate the evacuation and reconstruction activities [120]. On declaring an area a Rehabilitation Zone, existing statutory schemes were to be suspended for that area and no building operation or land transaction

was to be allowed [121]. The State was allowed to expropriate land subject to the regular compensation, and evacuate the land subject to the provision of alternative accommodation for the residents [122].

Notably, the law followed the statutory planning procedure in regard to public participation. The public was to be allowed to submit its objections to the declaration of an area as a rehabilitation zone. While objectors were given the "natural justice" right to voice their opinion, it was the duty of the Authority to make the final decision [123]. In addition, the public was given the right to submit its objections to the new planning proposals when dealt with by the regular planning authorities. No special requirements regarding the participation of the affected population were incorporated in this law.

The basic approach to slum clearance and procedures, as expressed in the Israeli law, resembles the strategy used in England during the 1950's and 1960's under the Housing Act 1957 [124]. In both cases, the purpose of the law was largely to provide for the demolition of houses no longer fit for human habitation. The economic rationale was to resell the land in the inner cities for new modern development projects, while using the money to rehouse the population in more appropriate neighbourhoods in other parts of the cities [125]. Only in recent years has this strategy been replaced by that of rehabilitation. However, due to lack of financial means very little use was made of the Israeli law.

During the early 1970's, the Israeli government budgeted

resources for housing, social services and education, and thus inter-communal tension appeared to be on the decline. However, the problems of social and physical poverty - largely faced by Sephardi communities - were still pressing. In practice, very little use was made of the Rehabilitation Zones Law, and the problems of slums and backward neighbourhoods were still to be dealt with in a comprehensive way [126].

In 1977, with the establishment of the Likud government, Prime Minister Begin declared that the core of his domestic policy would be the rehabilitation of neighbourhoods, called Project Renewal [127]. This project was designed to cover 160 distressed neighbourhoods throughout the country. Its cost, estimated at one milliard dollars, was to be raised largely through contributions from Jewish communities worldwide, and renewal in each neighbourhood would be completed within five years.

Though these estimates turned out to be over-optimistic, the project was put into action; by late 1982, it had covered 83 neighbourhoods and was still continuing elsewhere [128]. From a number of aspects, this project may be considered a turning point in Israel's socio-economic life. An integrated project which combines physical, environmental, socio-cultural and economic objectives, its principal aim is to close, or at least narrow, the gaps in Israeli society by improving existing conditions and opportunities for the underprivileged. Of particular interest in this context of this paper are two points: the non-statutory nature of the project, and the declared objective of improving the political involvement and public

participation of those affected [129]. These signify a remarkable departure from the old representative democracy expressed in both the planning law and the rehabilitation zones law.

No special legal structure was set up for this project since the existing laws generally provide the government with sufficient powers to carry out this project.

The administration in charge of this project is a non-statutory one [130]. At the local level, it includes a steering committee established in each neighbourhood which is divided almost equally between representatives of the local community and government officials and is in charge of designing a comprehensive programme for the regeneration of the neighbourhood. The programme often covers physical renovation of private buildings, extensions to existing small flats, improvements to public utilities and new constructions for public purposes. The programme also deals with educational and cultural schemes for both children and adults: different classes are planned in the formal and non-formal educational institutions. Furthermore, some programs also deal with unemployment and economic problems. They detail the needs of the neighbourhood in professional manpower and the cost of its implementation.

The local programmes are submitted for approval to inter-institutional steering committees which operate at the national level. The following stage is the implementation of the programme by the local population with the support of the various governmental and municipal institutions.

An important aspect regarding the design and implementation of the renewal project has to be stressed. This is the lack of coordination between the project and the statutory planning system. The planning institutions were not involved in the decision as to in which neighbourhoods renewal should take place; nor where they party to the design of the nature and scope of the project. The project views neighbourhoods in isolation and the opportunity to create an integrated overall planning project where neighbourhoods are redesigned as part of their urban setting must therefore be seen as having been wasted. This illustrates again the political weakness of the statutory planning machinery and the secondary importance attached to it by the executive ministries.

As already mentioned, an underlying principle of this project is that renewal of neighbourhoods should not be imposed on the local population but should be designed and implemented with their full collaboration. This is obviously a noble principle, but it often conflicts with the actual reality of urban renewal. The conflict is also shown in the legal tools used for positive implementation. The following words by Malcolm Grant are of great relevance to the Israeli situation:

"It is far from easy to create a satisfactory legal structure for urban renewal. Radical change often requires apparently arbitrary and individually harmful decisions; yet only radical change is likely to stem the rate of decline. The law need therefore to ensure that, whatever strategies are adopted, there is preserved an opportunity for different viewpoints to be heard, for conflicts of interest to be openly resolved where possible and for adequate address to be made available to those liable to be adversely affected. It is at best questionable whether these criteria have been satisfied in the past, and

there is no guarantee that they will in the future [131]".

In Israel, the existing laws place greater emphasis on the powers of the administration to impose what it considers necessary, rather than on real participation of the public affected. A new law, introduced in connection with the renewal project, illustrates the inherent problems of positive planning. The Houses (Renovation and Maintenance) Law 5740-1980 [132] aimed at providing visual improvements in the urban environment, ensuring government contributions of no less than 30% of the costs involved [133], the rest to be raised by the landowners themselves. The law also provided for administrative powers allowing the declaration of an area as a renovation zone and imposition on landowners of the duty to carry out those changes considered vital to the desired physical improvements [134].

Although it is still somewhat early to evaluate the achievements of this project, three aspects are widely appreciated: the significant improvement of physical conditions of these neighbourhoods; the participation of the local people in determining the direction taken by the project; the active involvement of the Jewish communities from abroad, not only in providing money but also in giving advice, professional aid, and monitoring the actual work.

6. Regional Planning During the Second Stage

Regional planning policy during the second stage continued to be of great importance and was given legal form by the establishment

of a statutory district outline scheme as the second tier in the hierarchy of the scheme structure. The law made the preparation of district schemes obligatory and prescribed a maximum period of five years from the date of coming into force of the law for the completion of this duty [135].

District schemes as an intermediate rank have a dual function: (1) to determine the details necessary for the implementation of the National Outline Scheme and (2) to provide guidelines for the planning of local schemes [136].

Furthermore, the law does not give substantive indication as to the content of regional policy to be pursued in the outline district schemes. Instead it gives a rather non-exclusive list of subjects related to use of land which may be included in a district scheme [137]. The objectives of such schemes, apart from helping to implement the national scheme, are to determine "any matter of general importance to the district which is likely to form the object of a local outline scheme, including the creation of appropriate conditions for the district in regard to security and employment" [138]. This vaguely made security and socio-economic considerations legitimate in regard to regional land use, and provides an opportunity to widen the scope of planning ends, though it does seem to extend the scope of means beyond those connected with the use of land [139].

Another indication as to the content of a desirable regional policy can be deduced from the provision dealing with documents

necessary for accompanying the scheme. Among these is a map "showing the character of the lands comprised in the scheme, from the point of view of agricultural exploitation" [140]. This and other provisions show the emphasis the law put on agricultural use of land above other uses.

The most significant aspect of statutory regional planning during most of the second stage is the non-existence of schemes. Not only were no district schemes prepared within the statutory time limit but, in some cases such as the Tel Aviv District, they were not prepared until the early 1980's [141].

The unbalanced development of the various districts continued [142], the most problematic district being that of the north which, due to political neglect, lacked industrial development. Here there was an additional socio-political problem of an internal imbalance between the declining Jewish and growing Arab populations.

The Southern District grew to some extent, thanks to its industrial potential based on natural resources. In addition, the evacuation of the Sinai was instrumental in the development of the Negev.

The Tel Aviv, Haifa and Central districts remained the most congested and developed. During the second stage they became in fact city regions, characterised by urban clusters around the cities of Tel Aviv and Haifa. At the same time they contained many ecological hazards of which the public has become increasingly aware. Any

attempt to halt further growth of these districts is generally fruitless.

The district of Jerusalem underwent remarkable changes during the second stage. It was the first district for which a statutory regional plan was prepared [143]. This was a map-based zoning scheme which strove to implement the national scheme of population dispersal, transportation network and so on, while providing a framework for local planning. However, while its underlying principles were presented by the planner, they did not become a binding part of the scheme. These principles combined elements of regulative and positive planning such as the preservation of the special character of the district of Jerusalem, the creation of new sources of employment outside the municipal area of Jerusalem, protection of agricultural land, provision for centres of industry while protecting the environment, development of a transportation network, centralised development of residential areas and centres for recreation, tourism and culture. Unfortunately these invaluable principles led to no more than a physical land use map where different zones were designated, together with some building regulations. No further positive planning tools were provided.

Further, the planning of the district of Jerusalem gave rise to the problematic position of statutory and non-statutory planning in Israel during this stage, particularly since the Six Day War. The reunification of the two parts of Jerusalem and the occupation of the surrounding areas of Judea and Samaria were of great geo-political, historical, social and cultural importance. This led to intensive

planning and development which could not but view the entire geographical area as a single regional planning unit. This new fact did not fit into the legal position whose perspective was limited to areas under the jurisdiction of Israeli planning laws. The result was that the statutory District Outline Scheme covered merely the territory within the old legal-administrative boundaries of the District, while it neglected the new areas which were to all practical purposes integrated in the region [144]. For example, the scheme considered two urban centres, Jerusalem and Beit Shemesh, while the new town with its industrial area which had been developed to the east of Jerusalem, called Ma'aleh Adumim, was ignored in this regional plan. Similar problems arose in the local planning of Jerusalem.

C. JUDICIAL INFLUENCE ON STATUTORY PLANNING DURING THE SECOND
STAGE

The first notable affect of the High Court on the Israeli political process during the second stage was its indirect support of participatory democracy. The limitations imposed by the Court on the Executive's discretion and use of powers encouraged groups and individuals to take an interest in the decision making process. During this period, the State's organs came, to a greater extent, under the scrutiny of the High Court of Justice, including the sphere of planning. Though the Court continued to pay lip service to the principle that it does not act as a planning commission and cannot replace the competent authority [145], it dealt more and more with substantive planning issues. This was done through the doctrine of ultra vires and abuse of power by taking into consideration irrelevant issues, alien considerations, and defiance of natural justice principles. In determining the nature of planning decisions, the Court did not content itself with the formal appearance of the decision, but also examined the content.

In HCJ 392/72 Berger V Haifa District Planning and Building Commission [146], the Court concluded that a scheme proposing to expropriate land which had been previously purchased by Christian German foreigners was, in fact, aimed at improper purpose. Although the official explanation was that the land was required for a community centre, it was revealed that the main purpose was to prevent Germans from settling in the neighbourhood. The ruling was

that the personality and the purposes of landowners in purchasing land are not relevant for the making of planning decisions of that kind. The scheme was nullified.

In HCJ 595/75 Salamman V Jerusalem District Planning and Building Commission [147], the Court was not satisfied that the planning commission had taken the relevant considerations into account when it decided that a new trunk road would by-pass land owned by an Arab notable, rather than cross the land of the petitioner. The Court thus ordered the commission to reconsider the petitioner's objection to the proposed road.

In the words of Justice Etzioni: "Even when the authority says in its decision that it had decided what it did for planning reasons ... it does not prevent this Court from examining if this is true" [148].

The Court criticised in particular the local level of the planning administration for its abuse of planning powers. In HCJ 235/76 Binyanei Kidmat Lod V Lod Local Planning and Building Commission [149], Justice Berenson went as far as to criticise the statutory provision which allocated powers to local planning authorities. This case dealt with the discretionary powers of local commissions to grant planning permits which were in fact deviations from an approved scheme.

Justice Berenzon expressed the view that since local planning commissions are in fact identical to local authorities, parochial considerations rather than the proper planning ones often influence granting of such permits. In describing their improper considerations, Justice Berenzon said that local councilors are at best either over-enthusiastic in the advancement of physical development of their localities, or too weak to resist the private and public developers pressure for such development. Hence they allow deviations from an approved scheme at the expense of the quality of the environment and urban life.

Berenzon went on to say that at its worse, the discretionary power of local commissions leads to favouritism, improper conduct and corruption. He recommended that this power to grant permits, known as "relaxation" and "non-conforming use", be repealed altogether, and suggested that such powers be vested with district commissions whom he considered more professionally equipped and above local politics. This re-allocation of functions would be, in Berenzon's view, a more effective method of tackling the problem of abuse of planning powers than using criminal proceedings and penalties.

The Court per Justice Berenzon went far beyond its traditional review role and into the realm of the legislature. However, since the allocation of planning functions was part of the more general area of central-local government relationships, no changes were introduced in the law.

Contrary to the above-mentioned tendency, the Court's ruling on issues regarding the submission and hearing of objections to proposed schemes gave no encouragement to participation of the general public in the planning process.

In HCJ 392/72 French Hill Hotel Ltd. V Jerusalem Local Planning and Building Commission [150], the Court was reluctant to broaden the circle of people who may be considered as "interest in any land" for the purpose of submission of objections beyond those with direct interest in terms of property rights. This case involved a project of a multi-story hotel on the French Hill, Jerusalem, near the Hebrew University Campus on Mount Scopus. In the view of the Court, the objectors to the scheme failed to show their substantive interest in the land beyond the general public's interest in the planning of Jerusalem. They were not given this standing in court.

Further, in HCJ 595/75 Salaman [151], the Court limited the scope of the provision as to hearing of objections in public to the stage at which objectors are given the right to be heard. The stages which follow, in which the commission discusses the issues and makes its decision are, the Court ruled, beyond the rule of the public.

Considering Prof. McAuslan's thesis as to the link between open government and public participation [152], these two examples seem to lead to the conclusion that not only was the Israeli court bent on protecting private property and discouraging public participation, but also diminished, or at least did not extend, the duty of open government and thus hindered public participation in planning.

1. The Scope of Planning Considerations

During the second stage, the High Court of Justice gave several indications that despite the inherent physical planning nature of the law, its tendency was towards the broadening of the scope of planning considerations.

The scope of considerations was repeatedly raised in regard to the policy of protection of agricultural land. As mentioned, the legislator adopted this policy and set up a special commission to deal with the matter. This committee was given the power to declare land "agricultural land", meaning that any change of use in the land would have to receive the consent of the committee. Section 11 of the First Schedule provides that "the committee shall exercise its powers under this law to the extent only that it is necessary so to do in order to ensure that agricultural land remains assigned to, and is used for, agricultural purposes". This section led to different opinions among the High Court of Justice as to the legitimate scope of considerations the committee may exercise.

A strict-line view saw agricultural purposes as the sole consideration of the committee. This line was pursued by Justice Cohen in HCJ 324/71 Savyon Community Council V The Committee for the Protection of Agricultural Land [153]. The result, implicit in Justice Cohen's judgement, was that once land was declared as agricultural land, the discretion to give consent to non-agricultural use is very limited. It is interesting to note that in the

circumstances of this case, this view helped a social attitude which was not at all concerned with the protection of agricultural land per se. The petitioner, a community council representing a highly prestigious neighbourhood, actually objected to a proposed scheme to extend a neighbouring new town which might have brought it to its doorstep. The scheme proposed to use agricultural land, which separated the two settlements, for a new housing estate. The local committee thus wanted to keep the neighbourhoods segregated. However, under the Court's ruling, the objective of solving the housing problem of the new town was regarded as ultra vires to the powers of the statutory committee.

A similar line of interpretation was pursued by Justice Asher in HCJ 41/78 Neaman V The Appeal Committee for the Protection of Agricultural Land [154]. Though he agreed in principle that the committee may allow declared agricultural land to be put to non-agricultural use, he restricted such use to what is deemed to contribute directly to agricultural use or to maintaining a rural settlement. The examples Justice Asher gave of such use were dwelling houses, workshops, public buildings for education, sport and entertainment and even industries which are an auxiliary source of income to the villagers. Considerations of improving the settlement's social structure through the provision of agricultural land for new populations which were not to be employed in agriculture was regarded in this case by Justice Asher as beyond the powers of the committee.

Broader interpretation of the scope of considerations of the committee were given by several Justices in other cases.

In a second case relating to the Savyon settlement, HCJ 601/75 Savyon Community Council V The Committee for the Protection of Agricultural Land [155], the High Court of Justice per Justice Berenzon held that it is inconceivable that in a dynamic country such as Israel, the rural interests would always override all other interests, and if a land is declared at one time as agricultural land that it should remain so for good. Justice Berenzon deduced from the composition of the committee, which had a majority of representatives from outside the rural sector, that the law allows various considerations in such matters. He concluded that the committee may give its consent for non-agricultural use if and when there is a superior interest and a fundamental change in the circumstances which led to the declaration, justifying a consent to non-agricultural land use [156].

In the same case, Justice Shamgar concluded [157] that agricultural considerations as expressed in section 11 are limited to the stage when a declaration of agricultural land is made; namely that no purpose other than agricultural use would justify such a declaration [158]. In his view, Section 11 does not apply to a later stage when the committee is asked to give its consent to a change from agricultural use. At such a stage, Justice Shamgar agreed, the committee may also take in other considerations, but in view of the prescribed policy only use of vital importance may override the objective of safeguarding agricultural land.

This broader line was followed in subsequent cases. In Neaman [159], the Court in a majority judgement ruled that the committee's decision, which was based on social objectives, was within its powers. There the committee allowed the change of agricultural use to the building of houses for families who, although they would not live from agriculture, would still contribute the social structure and would provide services to the rural population.

This line appears to represent the prevailing attitude of the High Court of Justice in regard to the policy of protection of agricultural land [160].

Socio-educational considerations in local planning were also discussed in HCJ 595/75 Salamman V Jerusalem District Planning and Building Commission [161]. There the Court said that in the planning of a new road, the commission may legitimately consider the importance of the use of particular agricultural farm land for the education of orphans, and would thus prefer the new road to cross through neighbouring land. Though such objectives are not among the physical objectives as mentioned in the law, they were regarded as legitimate considerations.

The tendency to broaden the scope of planning considerations was also evident in other spheres of planning.

In a recent case 486/81 Notzer V Orbit Mediacenter [162], the Supreme Court went much further with this tendency. The Court considered a scheme which provided for the building of a medical centre in the prestigious residential neighbourhood of Hertzlia Pituach. The centre was initiated by Jewish investors from abroad and was expected to provide clinics for immigrant doctors. It was proved that these two points played a major role in the commission's decision to approve the scheme. The Judge in the first instance ruled that these are irrelevant considerations. However the Supreme Court of Justice per President Landau ruled that considerations such as the absorption of professional immigrants and the encouragement of Jewish investment in Israel, although not explicitly stated in the law, are of high national priority and thus may come within the scope of planning considerations.

This ruling may be explained as an expression of some of the tenets of Zionist ideology in the physical planning sphere. The need to provide for the absorption of Jewish immigrants and the socio-economic policy of encouraging Jewish investment in Israel were recognised as relevant considerations in making planning decisions.

2. Flexibility and Stability in the Planning Process

The conflict between a flexible planning process and stability in the way land should be used is inherent in any statutory planning system. In a system such as the Israeli one which opts for a high degree of certainty through a rigid type of scheme, the problem of

how to allow for flexibility in planning for adjustments in view of actual development is particularly difficult. The Israeli legislator attempted to tackle this problem by providing discretionary powers to the authorities to change, repeal and suspend statutory schemes. This was in fact similar to the way the Mandatory legislator had dealt with the problem.

The Court added its own measure of flexibility through the ruling that the principle of res judicata is not in general applicable to the planning decision making process [163]. The Court deduced this among other things from the statutory provisions for the scheme making process. Under these provisions, there are two main stages of decision making. First, before the deposit of a proposed scheme, and second after the hearing of the objections [164]. The fact that the law itself allows the commission to reconsider the proposal and make changes before the final decision is made led Justice Bernzon, in HCJ 189/74 Bruno V Jerusalem District Planning and Building Commission [165], to reaffirm that the rule of res judicata does not apply in the same way to those statutory planning bodies as to other administrative bodies. The result is that the planning commission may reconsider a proposed scheme indefinitely until it has become a legally binding document.

There are some limitations to this principle, First, when an individual has been given planning permission, the commission is not at liberty to change its decision and repeal the granted permit [166], save in some specific circumstances [167]. The principle that granted rights are to be protected by law prevails in such cases.

Second, reconsideration is always subject to the principle of reasonability; i.e. the commission cannot fundamentally change its decision within a short period of time when no factual changes have taken place, or where there was no justification for a new valuation of the existing circumstances [168].

In practice the legal position, which still offers wide discretion to the authorities to reconsider their decisions, is often used only in one way; namely to allow something which has been previously refused. It opens the door for further political pressure which eventually pays off. The problem is that surrender to applicants' pressure is often at the expense of the objector who expects some degree of certainty in the planning process. However, the conflict is still far from being solved.

3. Planning Bargaining

The practice of planning bargaining in Israel during the second stage was very common, although very little has been said publicly about it. As explained, this is rooted in political reality, particularly at the local level. However, since the process was often motivated by factional interests, this casts a shadow on the legitimacy of its use. On the rare occasions when bargaining has come to the surface, the Court showed a negative attitude which generally reflected the suspicions that such agreements encountered.

In CC 1449/69 Meler V Salmon [169], a district court heavily criticised the Municipality of Haifa for an agreement it made with a developer. Under that agreement, the Municipality was to receive a piece of land for the use of a kindergarten, while the local commission would give the developer a permit for extra building density. The Court quoted another case which distastefully named such agreements as "trade in densities", inappropriate conduct for a local authority. The Court pointed out that the authority had all the legitimate means for purchase, exchange or expropriation when it needed land for public purposes.

In a later case, CA 73/76 Schneider V Jerusalem Local Planning and Building Commission and the Municipality of Jerusalem [170], more complicated bargaining was involved. There the local authorities opened proceedings to evacuate a house which, because of its location, created a serious hazard for traffic. Under the order of the arbitrator, the authorities had either to compensate the dwellers or provide them with alternative housing. The authorities then purchased a small piece of land on which the scheme in force prohibited any building. It proceeded to initiate a change in the scheme so as to allow the building for rehousing the evacuees. The new scheme had gone through all the formal procedures and was approved. When this scheme was considered by the Court, it was ruled illegal because it sought to promote a purpose alien to the law. The attempt to solve problems in one area by causing new problems in another area, said the Court, is alien to the purposes of the law. The Court restricted the imposition of provisions in local scheme for

solving problems in the area under the scheme, and not for solving problems of different areas. More generally, the Court saw in that scheme an attempt to solve the financial problem of the Municipality rather than a purely planning problem, and thus found it exceeding the powers under the planning law.

In both cases there were individuals who were particularly aggrieved by the outcome of the planning agreement. Their interests conflicted with those who were parties to the agreement. This leads to a fundamental problem inherent in bargaining by planning authorities. Planning authorities, particularly at the local level, have a dual task. On the one hand they are the executive power concerned with positive development, and on the other they are planning decision making bodies which have quasi judicial powers to determine between conflicting interests. To allow planning bargaining by planning authorities seems to allow an interested party to become a judge of its own court. This problem is somewhat less critical in Israel because of differences, in some cases, between decision making bodies and executive authorities. Nonetheless, the problem is far from any solution [171].

4. The Effect of Planning Provisions on the Individual

During the second stage, the ideology of collectivism still dominated the statutory planning provisions. Individualism was given only secondary importance. This was most distinctly manifested in the provision which enabled the authorities an acquisition without compensation of no less than 40% of each plot of land for a

prescribed list of public services. The new provision both increased the percentage from 25 to 40 and extended the list of purposes for which expropriation could take place. Such a provision would be unthinkable under the British system, but was enabled in Israel because it merely broadened the age-old power of expropriation without compensation [172]. This extension emerged from the growing needs of public services which were not catered for in the old schemes, and from the financial difficulties faced by local authorities in meeting these needs. However, in the explanatory note of the Bill [173], the emphasis was placed on another reason; namely that "experience has shown that landowners benefited from the implementation of schemes in regard to alignment of roads, maintaining open spaces and so on, far more than the loss from the 25% (of land) they had to dedicate without compensation". In other words, the gain of the private sector was given as the official justification for the extension of the public share in land ownership.

Another significant tool which expressed this collectivist attitude was again in regard to combination and repartition of plots of land. As stated, the ill-effects of the old speculative partition of land during the Mandatory period led to the extensive powers given to planning authorities for the rearrangement of plots. These powers were maintained in the new law [174]. They were also used to replace the first generation of statutory schemes by more modern and updated arrangements of land. Hence detailed schemes which include combinations of plots and repartition into new plots remained very common during the second stage.

It is of interest to note that this type of re-planning was often utilised by the authorities to acquire part of the land for public purposes while preserving the value (if not the size) of the remaining land by allowing greater densities and other benefits to the developers. This way of evading payment of compensation was even approved by the Court although, as one Justice noted, it might sometimes unjustly put the burden on the few rather than on the public in general.

With the years, and owing to the growing tendency towards individualism and private initiative, landowners became more and more reluctant to accept the authorities' intervention in their property rights. The implementation of the 40% expropriation without compensation became legally and politically very difficult. The result was that expropriation is carried out, but compensation is "paid" by means of relaxation of planning restrictions and greater densities on the remaining 60% of land. Nevertheless, private developers increasingly challenge in Court the authorities' powers to intervene in their property.

In a recent case [175] which concerned a planning provision prescribing that residents of one house (will) have a right of way on neighbouring land, District Court Judges expressed different opinions as to the scope of the authorities' powers to prescribe such rights and duties. The legal position on this point is thus uncertain.

PART III

STATUTORY PLANNING AS A FORM OF SOCIAL CONTROL

Part III sums up the analysis of the two statutory planning systems of Palestine and Israel in respect to their special significance as components in a complex system of social control. The concept of social control elucidates the phenomenon of social order and norm-oriented behaviour. The application of this concept to the above-mentioned planning systems leads to the identification of three inter-related roles which were exercised by these systems.

As mentioned previously, these roles can be classified loosely as 1) political role - to serve as a tool for effective government; 2) economic role - to provide efficient utilisation of scarce resources; 3) social role - to advance human welfare and process. The cumulative exercise of these roles, from which statutory planning largely draws its nature as a component of social control, contributes to the maintenance of the prevailing social order.

An analysis of the planning systems of Palestine and Israel reveals that almost every facet of the planning systems expressed all the roles mentioned above. It is thus sometimes difficult to assign a particular role to a specific part of a system. Nevertheless, it is considered useful for both an understanding of the significance of the three roles and the basic facets of the systems to analyse each facet in conjunction with the major role it played and expressed.

The analysis in this part of the work proceeds through a typology of four facets: 1) The organisation of planning in connection with the political role of the system; i.e. effective government. 2) The planning process viewed from the economic role; i.e. efficient utilisation of scarce resources. 3) The substantive content of planning, focused through the social role; i.e. human welfare and progress. 4) The implementation of statutory planning, both positive and regulative. This final facet elucidates the mutual relations between the statutory planning system and the prevailing social order. Here the special character of statutory planning as a theoretical form of social control is contrasted with the actual functioning of the systems being studied during the various historical phases.

CHAPTER 9. THE ORGANISATION OF PLANNING AND EFFECTIVE GOVERNMENT

Pursuant to the underlying thesis of this work as to the nature of planning systems, the organisation of planning in the statutory systems mentioned above can be described in general terms as an agency of social control with the following set of elements:

An organised body of government with formal hierarchal structure. Its composition was mainly affected by the balance of political power in society. It was assigned a range of functions for which it enjoyed the backing of the force of law. Its functions were directly related to the physical environment but were, more broadly, inter-connected with the social order as a whole. This relationship with the social order was largely affected by the political role exercised through the systems as tools for effective government.

Some of these elements will now be discussed, thus elucidating the significance of the planning organisation as an agency of social control.

A. FORMAL ORGANISATION

The formal-official character of the statutory planning machineries made them an obvious and visible tool for social control [1].

The Mandatory era saw the establishment of a governmental organisation whose task was to implement modern town planning in Palestine. For most of this period, town planning relied solely on the statutory planning institutions. Although non-statutory local planning agencies were gradually created and functioned towards the later stage of the British Mandate, they were relatively weak and of secondary importance. This position remained unchanged during the formative years of the State of Israel. Formal and institutional planning organisation thus marked the development of the planning systems in Palestine and in Israel.

This was not exclusive to these two systems. In Britain, too, the modern era of planning which began in the 20th century was characterised by the introduction under the 1909 Act of formal legal-administrative organisation in charge of town planning [2]. However, in Britain this organisation owed much of its existence to non-institutional pioneering thinkers, private philanthropists and the "garden cities" movement, while in Palestine the official government planning system preceded non-statutory local planning institutions [2]. During the first stage in Palestine, the official machinery could draw only limited help from non-official planning agencies, though by the second stage these agencies were actually

able to offer more than they were asked to do by the machinery of the government [4].

The intensity and complexity of modern life gave rise to a general tendency to prefer formal agencies of social control. This is usually characteristic of societies with great divisions of labour, heterogeneity of population and sub-groups with different sets of norms and ideologies [5]. Such characteristics were shared by the societies of Palestine and Israel, as well those of Britain and the Western world. This tendency also led to preference for centralised, formal town planning machinery as opposed to non-formal, fragmented or ad-hoc governmental bodies, and for profit-oriented private sector planning.

The creation of an explicit structure of planning administration may be seen as corresponding to the Weberian view of the ideal-type bureaucracy [6] and to a later development of administrative management principles by a school of thought known as "scientific administration" [7]. Under these, the effective performance of administration rests, among other things, upon formal structure and hierarchal and disciplined organisation with a clearly defined division of powers and responsibilities. Although these traditional administrative concepts were criticised [8] for over-emphasising the importance of formal, as opposed to informal, structures and relationships, they are of great importance in bringing to light the advantages of orderly organised machinery for efficient governmental operation and in fact for effective mechanism of social control.

The formal character of the statutory planning organisations, the explicit definition of the hierarchy of institutions, their composition, nature of their powers, duties and modes of operation, put them in line with other obvious agents of social control such as the military, the police and the courts. Their activities in rule-making, adjudication of conflicts, law enforcement and implementation accumulate into making them a fundamental instrument of social control in respect of regulation of social, economic and political behaviour.

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It should be noted that even non-statutory planning agencies fulfill functions of social control, no less than other agents of socialisation such as teachers, social workers or psychiatrists. As Robert Goodman says in reference to planners: "As ostensible technicians we are not the visible symbols of oppression like the military and police. We are more sophisticated, more educated, more socially conscious than the generals - we are the soft cops" [9].

As mentioned, the planning organisation of Mandatory Palestine consisted largely of the official statutory planning machinery; thus its salient role of social control was clear and visible. Such domination of the official planning institutions was also characteristic to the Israeli system, particularly during the formative stage. Hence the conclusion as to the significant social control role of the planning machinery applies also to the Israeli system.

However, the evolution of the systems above revealed that formal statutory planning institutions were sometimes less effective than other agencies of social control (e.g. governmental executive bodies and private market forces) in influencing people to follow prescribed patterns of urban and rural development. Furthermore, in many instances the statutory organisation was a relatively weak centre of decision making and was controlled from other centres. This leads to the conclusion that the effectiveness of formal statutory planning machinery is only partially related to its administrative structure and efficiency; it has far more connection with the socio-political setting within which the machinery operates. As it has been shown above, different sets of socio-political circumstances led to different results in terms of effectiveness of the machinery. However, the very act of creating statutory machinery turned the law into a factor in the socio-political arena and influenced the balance of political power [10].

The role of planning law, from this perspective, was fulfilled by the provision of a legally defined organisation, its composition, powers, duties and the legal requirements governing its operation. Yet beyond this classic role of administrative law, planning laws in the systems above played a somewhat exceptional role as an instrument of what is called "status raising". This was demonstrated particularly with regard to the local authorities during the Mandatory era [11] and with regard to the Ministry of the Interior in Israel. Their statutory basis provided the former institutions with great power in their political struggle with the national communal institutions. It also helped the latter in its struggle for greater

influence over the country's physical development with the executive Ministries and other public bodies.

Though it could be argued that the effectiveness of the machinery resulted solely from its statutory powers backed by the force of law, it is contended here that an equal contribution to the effectiveness of planning resulted from a psychological aspect which is derived from the law, this aspect is described as "status raising" [12].

If it is accepted that there exists such a phenomenon as respect for the law and statutory institutions, then the very definition of a planning body as a statutory planning body gives it psychological weight, adding to its existing status by virtue of its statutory powers. A striking example is the Israeli National Planning Board. Positive planning at the national level requiring collaboration between many public and governmental institutions could not be pursued under the threat of coercion. When such collaboration was achieved it was, to some extent, due to the psychological effect of the legal status of the planning machinery, in this instance the National Board. However, as it has been said, on many occasions planning agencies which had greater political status than the statutory machinery showed greater influence over social behaviour. It may be deduced from the above systems that formal statutory planning machinery can be an effective agency of social control providing it does not compete directly with counter-forces which are backed by a greater political strength than that enjoyed by the statutory machinery. In other words, the advantage of formal

statutory planning machinery strongly depends on its consistency with the broader socio-political framework and its position within such a framework [13].

B. COMPOSITION

Of all the organisational-administrative arrangements, the composition of the planning machineries was most directly affected by the prevailing power structure while reinforcing the existing political system and, more broadly, the social order in general [14].

"Social order", as Joe Baily says [15] "is constructed principally by the social organisation of the state". It is thus important to study the statutory organisation of planning and its social control significance in the context of other major socio-political institutions which exist in a given society and affect its social order. This is the reason for the elaborate description of the social and political institutions during the Mandatory and Israeli eras. The description above leads to the identification of two socio-historical processes which took place in these eras. The processes are particularly relevant to an understanding of the political role of the planning organisation. These were a) the institutionalisation of the power structure [16], and b) the acquisition of legitimacy of the governing bodies [17].

Some explanation as a reminder of these powers seems necessary. Public life in both Mandatory Palestine and Israel was characterised by the formative-innovative nature of their social and political systems. The crystallisation of a new society and the formation of a new political-governmental system in each of the cases can be sharply contrasted with the long tradition and stability of socio-political systems such as that of Britain. Since the eras under discussion in this work saw a complicated process of the laying of foundations of new states in Palestine and later in Israel, the power struggle between different groups and institutions in each case was significantly sharper than in Britain during the same period. This struggle affected, as was reflected in, the statutory planning machinery. Further, the changes which the governmental machinery underwent throughout these years were also explained as inter-related with the particular social, economic and political developments in Palestine and Israel, and as attempts at re-establishing the legitimacy of the governing bodies.

To return to the link between the social structure and the composition of the planning institutions, as stated above, the concept of social control is based on the assumption that a degree of social solidarity is essential for the existence of any society, irrespective of its political system. Yet social integration between groups and individuals is a serious problem in any society which is characterised by widely differing interests, impulses and attitudes. The society of Mandatory Palestine with its complicated structure made social cooperation an ideal which, if not within the boundaries

of the different sectors of the Arabs and the Jews, could hardly be accomplished. Furthermore, even within these two communities, there was a complicated power structure which created many centres of influence and thus, at times, a fragile equilibrium in their internal social order.

On top of this division in society was the distinction, resulting from the mandatory situation, between the rulers and the ruled, and the interests of the mandatory power with those of the local population.

The situation in Israel regarding the complexity of the power structure has not changed to any large degree. Despite the great majority of the Jewish community in the entire population, the demography of Israel has been characterised by wide heterogeneity. The new political system, based on proportional representation, also contributed to the diffusion of power between many groups and parties. The fact that Israeli society has demonstrated a high level of solidarity concerning matters of national security does not contradict another truth that there have been great differences of opinion regarding social values, ideologies, perceptions and political objectives. The resulting agreement to preserve the "status quo" in social and economic matters signifies a pragmatic solution to incompatible views.

Shean McConnell is right in saying that "planning is practised in any country in accordance with the political will of those in power" [18]. The statutory planning machineries of the systems

described above reflected an attempt to create social stability under the prevailing governing powers. That stability was to be achieved by a composition which generally adhered to the division of power within the respective societies [19]. But who actually exercised social control through the statutory planning organisation?

Answering this question in regard to the mandatory era, three elements ought to be mentioned: 1) the British administration; 2) the national institutions of both Arabs and Jews; 3) the local authorities.

The British administration formed the responsible [20] central government and dominated the statutory planning machinery, following colonial-paternalistic ideology. A basic postulate prevailing throughout the British Empire was that government powers should first and foremost be utilised to advance British interests, both strategic and local. Palestine, although a Mandated territory in which Britain had dual obligations to both Jews and Arabs, was no exception. For the achievement of British objectives in Palestine, common colonial methods were employed with varying degrees of success. Among these were 1) The imposition of law and order to secure the obedience of the local people. 2) The imposition of an administrative and legal framework which embodies British values and attitudes as a means of indoctrinating the local population towards the British point of view. 3) The maintenance of existing institutions and the establishment of new bodies as vehicles for indirect rule. The high degree of solidarity within the central government in carrying out the British policies is noteworthy.

The government of Palestine was anxious to retain its control over the main decision-making institutions. Several organisational reforms in the planning machinery changed the distribution of functions between the various bodies, but they did not alter governmental dominance. Whether it was centralised, decentralised or a mixture of the two, the composition was designed to serve the government in its aim of supervising the working of the machinery. Such supervision was part of a broader attempt at ensuring the authority of the government over the local population and its institutions in planning as well as in other aspects of life. An accepted authority could help the government pursue its planning goals (the ostensible goals) and also general British objectives (meta-goals) in Palestine.

The national institutions of the local population were represented in statutory planning bodies during the 1920's and the 1930's. Casting together leaders of the rival communities was in itself a British attempt to achieve conformity of the local population with the British perceptions, interests and prescribed rules. However, it was also an opportunity for the national leadership of both Arabs and Jews to participate in policy making, or rather to exert pressure on British officials to advance their different national goals. On the other hand, their participation in the Central Planning Commission also helped the leadership to consolidate its authority over the respective communities.

At the end of the British rule in Palestine in 1948, the last High Commissioner, Sir Alan Cuninghame, wrote about British planning activities in Jerusalem as "one feature of administration here, which has been persistently pursued without regard to politics or schism by the selfless devotion of individuals of all races and creeds" [22]. However, despite this description of an ideal working of the planning machinery, solidarity between British, Jews and Arabs even in this sphere of life was not accomplished. In fact, the idea that such solidarity could be feasible, despite the general political conflicts, seems somewhat naive. It is probably rooted in a narrow perception of planning as the art of physical preservation and architectural-aesthetic enterprise, isolated from ideological motives and socio-economic and political implications.

However, the national communities in Palestine under their emerging leaders had a much more politically-oriented perception of the country's planning and development. Thus, although there was no consensus between the different perceptions, the local leaders succeeded in achieving some degree of solidarity within their respective communities concerning national goals. The participation of the local leaders in the official planning organisation and their interaction with planning decision making bodies thus had a dual affect.

Firstly, it made physical planning and development an issue in the political struggle between the rival communities. Secondly, their

involvement can be seen as a stage in which they gained legitimate authority by the local national leadership, externally and internally alike.

The local authorities, were gradually made into planning commissions under the provisions of the law. They drew great political strength from the statutory provisions, particularly in regard to the Jewish community.

In a period which saw the institutionalisation of the Jewish national bodies under a Socialist-Zionist party, the growing power of local authorities, some of which were capitalistic-oriented, had far-reaching consequences for the development of Israel. The resulting balance of power gave rise to the many, and often conflicting, ideologies and social values, which also ensured their reflection in the physical planning of the country.

The discussion will now turn to the socio-political structure of Israel and its connection with the composition of the planning organisation. The reformed composition of the planning machinery during the early stage of the State of Israel and the move towards a more integrated structure in the second stage justify a different emphasis on the elements which exercised social control through this machinery. They were only formally similar to those of the Mandatory era.

The first element was the central government of Israel. It took over the dominant position of the Mandatory government in the planning machinery. The transformation from a Mandatory rule to a democratically constituted government was not considered at first as requiring dramatic changes in the composition of the machinery since central government control over the planning machinery was not regarded as inconsistent with the democratic nature of the State. Furthermore, in view of the coalition government of Israel, where different parties and social groups were represented, such control was considered a positive factor in the legitimacy of the inherited composition of the planning machinery. Under the prevailing ideologies of representative democracy, Zionist statehood and collectivism, as described above, the central government was to be the dominant force not only in planning policy making but also in actual land development. Taking the leading position within the planning organisation was the realisation of these ideologies. It was also an important tool for the institutionalisation of government authority within the country over local authorities and the general public.

The second element was the small party which held political responsibility for planning and thus controlled the planning machinery. Amongst the parties which held that responsibility since 1948, the National Religious Party - controlling the Ministry of the Interior for most of the years - was dominant in the planning machinery. As elaborated above, the coalition governments were far from being united in their opinions concerning social values and

internal way of life. Political struggle through utilisation of administrative powers has been characteristic of Israeli democracy. The National Religious Party (N.R.P), being a junior partner in the coalition, saw the planning machinery as a legitimate tool in the power struggle, both inside the government against the other partners which held the executive ministries, and outside the government in an attempt to consolidate its influence in local authorities and the general public.

The third element is the local authorities, which continued to see their statutory planning powers as a source of political strength. Though they developed through the years their own ties with the government, bearing responsibility in local and environmental affairs, their dependence on the central government remained excessive. However, the legal position of the local authorities as planning decision making bodies helped them institutionalise their authority, which was recognised by both the central government and the general public. This led to the growing partnership between central and local government within the planning machinery.

In the later stages of the Israeli statutory planning (i.e. since 1965 when the new law was enacted), the most interesting elements are those related to the composition of the new bodies which were constituted for national and regional planning. Central government representation in these bodies is strikingly strong, yet on the other hand there is a growing strength in local authorities' representation, a reflection of their growing stand in Israeli politics.

The main additional element in the planning machinery is the representation of various sectors and public organisations as full members of the commissions, allowing public participation not only through elected representatives but also through representatives of public sectors and voluntary organisations. This signifies some ideological shift from representative democracy towards greater public participation in the formal agencies of social control in Israel. Participation of the Israeli type can be seen as the middle way between the traditional view of public interest as expressed in Britain by Sir Desmond Heap [23] and the populist view of direct public participation expressed by Prof. Wade and others [25]. However in Israel, it has been argued, this shift was part of a wider social change by which the Israeli public became more sensitive to both the politics of decision making and to the quality of urban and country life.

It should be stressed that the incorporation of representatives of voluntary organisations as participants in some statutory commissions means for them very little real decision making power. Their main benefit is in obtaining information, knowledge and easy access to the decision making bodies. These help them to utilise other methods, such as public opinion and pressure groups, to exercise social control. Thus what appears to be a tendency towards participatory democracy may be regarded also as a method of re-institutionalisation of the authority of governmental bodies which held the real power within the planning machinery. The incorporation of a few members of public organisations in planning commissions may

be no more than a mask over the unaltered face of the planning machinery. It may be considered helpful by the government because of the bad image of the planning machinery as a body strongly influenced by "narrow" political interests. Such an image, as it has been shown, strongly affected the effectiveness of the planning machinery and its legitimacy.

"The injection of a new element into the decision making process", noted McAuslan "is likely to be successful only if it is realised that the whole process will change whether it is planned to change or not" [25]. The Israeli experience of real public participation provides evidence of the truth of this comment. Since the planning process has hardly been changed, the statutory provision as to the composition of the planning machinery has not led to any significant citizen involvement in planning.

The administrative factor in the composition of the planning machinery is exemplified by the growing share of professionals among the members of planning commissions. The inclusion of professional planners as full members has historical roots. During the Mandatory era the main planning institutions consisted solely of government officials, among them the government town planning officer. There were no politicians in these institutions: thus all the officials, including the professional town planner, followed the policies prescribed by the Mandatory government. In planning institutions at the local level, which consisted of locally elected members, the town engineer served only as planning advisor and not as a member in the decision making body.

This structure was inherited by the Israeli system. However, during Israel's formative stage there was a growing demand to raise the status of professional planners, particularly in the local planning institutions. This tendency towards professionalism in decision making was an antithesis to the influence of factional political interests in the planning process. The professional planners who claimed impartiality in planning matters and promised to consider the interest of the public at large received, in the circumstances, wide public support.

The growing complexity of the inter-related problems of the environment also contributed in two different ways. While the realisation of the true nature of town planning led the public to demand greater direct involvement in planning decision making, at the expense of professionals and politicians, it also led to a counter demand for greater democratic representation and greater involvement of professionals from various disciplines in the process. Thus incorporation of professionals as members appears to mean some administrative improvement in the functioning of the machinery. This should be regarded also as a contributing element in the institutionalisation of the machinery's legitimate authority [26].

CHAPTER 10. THE PLANNING PROCESS AND EFFICIENT UTILISATION OF
SCARCE RESOURCES

The planning process in the abovementioned systems is considered a mechanism of social control with the following set of elements:

The planning process was a statutory process of decision making in the environmental sphere. It entailed plan making, adjudication of conflicts, law enforcement and tools for positive implementation. This planning process had, among other things, an economic role which was to contribute to efficient utilisation of the country's scarce resources. In this context, efficiency was aimed at through two different but complementary aspects: through the functioning of the planning institutions and the practical effect on the physical environment.

From a broad perspective such efficiency was not only of economic significance but also had social and political implications - in terms of the stability of the political system and the social order as a whole. Hence the planning process can be seen as a mechanism of social control. Some of these elements will be discussed below.

The activity of town planning in the sense of basic regulation of the layout and design of human settlements has been exercised since time immemorial. However, town planning in the modern era has

been characterised by its institutionalisation as a formal, binding process. The economic role of this process, which is its contribution to greater efficiency in the utilisation of scarce resources, is considered to be a product of the performance and results of the unregulated development market and the arbitrary modes of bureaucratic behaviour. Hence this role has two aspects.

The first aspect relates to the design of the process itself in order to achieve greater efficiency in bureaucratic behaviour and administrative functioning. Since efficiency in this sphere contributes to the authority and legitimacy of the government, it has inherent social and political implications which ultimately lead to a stable social order. This process can be seen as part of the system for social control [1].

The second aspect relates to the actual use of the planning process for efficient utilisation of land and other economic resources. Since efficiency here attempts to provide a higher quality physical environment, it has even greater social, economic and political implications. Herein lies the link to social order and control [2].

These two aspects will now be elucidated further in regard to the evolution of the planning process in the Mandatory and Israeli systems.

A. FORMAL DECISION MAKING PROCESS

The first statutory planning process worthy of this name in Palestine was introduced by the 1921 Ordinance. This Mandatory law followed its British counterpart in providing a detailed procedural framework for planning decision making. The planning process prescribed within followed Geddes' working method, which then became part of the British standard sequence of planning: survey-analysis-plan [3]. For example, under the 1921 Ordinance the planning process entailed provisions for the declaration of town planning areas, gathering of relevant information by the plan making body, procedure of preparation of plans - including publication and hearing of objections - and the approval of each plan and tools for their enforcement. Though many more details were added to the framework in subsequent Mandatory legislation, they did not change its underlying Geddesian perceptions.

From an administrative perspective, this procedural framework was part of a new bureaucratic culture which was introduced into Palestine by the British [4]. The innovation of this administrative mode of operation is brought to light when compared with the previous despotic methods of the Turkish rule. By contrast, in Britain's laissez-faire atmosphere at the end of the 19th century the administrative aspect of the new planning process acquired a totally different meaning.

The first important aspect of the innovative town planning process is that it was not merely left to the discretion of the administration, but was also enshrined in the law. This was of great significance to both the administration and the public. Prior to 1921, the setting down of regulations concerning land use and physical development was a much shorter and less rigid process than that prescribed by the new law. This was true not only with regard to the Turkish era, but also to British military rule. As Colonel Storrs, the Military Governor of Jerusalem, noted: "My word was law" [5]. Though the Mandatory planning law provided the administration with very wide powers, in contrast with the past the statutory planning process imposed some restrictions on the freedom of the government to regulate physical development. For example, the law imposed upon the authorities the duty to prepare town planning schemes, to follow certain procedures of plan making, to consider objections from interested parties to the planning proposals, and in some cases to reach an agreement with landowners before prescribing certain planning rules.

Following Prof. McAuslan's view of "the debate on open government as being an extension of the debate on public participation in planning" [6], here too the formalisation of the planning decision making process can be seen as a tool of open government.

It can thus be concluded that the introduction of the new planning process in Palestine gave hope for a more accountable and responsible government in the sense of greater personal integrity, and a move away from the corruption which characterised the Turkish rule. This point was of great importance in the circumstances of Palestine since the legitimacy of the Mandatory Government and the new social order was built upon the confidence of the local public in responsible use of power by government officials.

It is worth noting that even when the breach in this public confidence occurred during the years of the second stage, it was not in general because of a feeling that British officials were abusing their powers for personal gain, but for advancing the interests of the Mandatory power at the expense of the local population.

The second important aspect is that of professionalism in the functioning of government. The introduction of an orderly and formal process of planning decision making in Palestine provided the tools for administrative efficiency in the utilisation of public resources. This was useful for the inexperienced, newly established Mandatory government which had to deal with pressing environmental problems. However, the formal statutory planning process was particularly important as an example to the local population and the international community of the professional mode of administrative functioning, enabling the Mandatory government to establish its authority and maintain social order and stability.

The advantage of professionalism in public administration through an explicit statutory decision making process was of no less importance in Britain on the eve of the introduction of its first planning legislation than it was in Palestine. In Britain the move from empiric and pragmatic administrative methods of dealing with separate environmental problems, as demonstrated in the nineteenth century's land use legislation, into a much broader method of systematic physical town planning, as expressed in the early twentieth century planning laws, was of utmost importance. Inherent in this move was the claim that the new planning process along professional lines would be a more efficient government tool for tackling environmental problems [7]. Another claim inherent in the new government intervention in the development market in Britain was that the administration was acting in the public interest [8]. Such claims were, in turn, part of an attempt at maintaining the legitimacy of the government system, since they entailed the assertion that through the newly established town planning process, the government was the appropriate institution to deal with the pressing problems [9].

Returning to the statutory decision making process of Palestine, it should be pointed out that what may seem to be a formal and rigid decision making framework entailed wide discretionary powers and measures of flexibility in the planning process. Significantly, this discretion was vested with the planning institutions which largely consisted of members of the central government. The statutory process could not prevent arbitrariness and abuse of powers or, at the very least, manipulation of the planning powers for irrelevant

objectives. As asserted above, the flexibility which was inherent in the statutory planning framework could be used, and was used, by the British administration to advance its interests in maintaining the existing socio-political system and British rule over the country [10].

Thirdly, from the perspective of the affected public, the introduction of a statutory binding decision making process allowed some control to public opinion and judicial review over administrative performance. By comparison, at the beginning of the British military rule in Palestine, such opportunities for control over the administration and its functioning were non-existent. As Colonel Storrs noted: "As there were no lawyers, judges or courts [his commending word] was the only law. Better for Palestine then, there were no newspapers. Legally and journalistically we lived in a State of Innocence" [11].

Control over any governmental organisation is widely appreciated to be of vital importance in preventing waste of resources, corruption, abuse of powers, and in achieving efficient administration. This control process was, in the circumstances of Mandatory rule, also a factor in the building up of public confidence in the government and stable socio-political systems. By providing the opportunity for such a control, the establishment of the statutory planning process can be considered a mechanism of "social control from below" [12].

The administrative significance of the statutory planning process during the early Israeli era was especially great because of the anti-planning and pro-improvisation tendencies in the name of pragmatism. These tendencies prevailed among the Jewish national institutions of the pre-State period and infiltrated into the newly established governmental organisations. The fact that an orderly formal process of town planning was made binding under the law helped counter pro-planning perceptions of which the advocates were mainly the professionals.

There was however a great difference from the past which resulted from the new political setting in which the planning process was made operative. With the establishment of the State of Israel, the planning process became part of the new democratic system. Thus notions of representation, public participation, responsibility and accountability acquired much greater significance. The planning process gave rise to high expectations for a rational, serious, professional and, above all, democratic process of rule making and policy formulation in the interest of the general public. This was of the outmost importance in establishing the authority and legitimacy of the new political system and the stability of the social order.

The many changes introduced in the statutory framework of planning law between 1921 and the 1980's sought, among other things, to remedy defects such as rigidity of the organisational structure, inappropriate composition of planning institutions, unreasonable

allocation of functions, cumbersome procedures, lack of coordination and unworkable enforcement provisions.

The tackling of such problems by law can, in itself, be regarded as an expression of administrative-organisational planning. In this way the law stimulated what Karl Mannheim called [13] rational management of society and the restriction of the irrational power which is a disintegrative force and thus poses a threat to the existence of a free society.

The degree of statutory intervention in the way the planning organization was internally organised and functioned varied from one stage to the next. They in fact provided different answers to the question of detailed design of planning machinery, whether it was a legal or administrative issue. The determining factors in the degree of intervention were obviously connected with the more general legal-constitutional framework and the broader socio-political circumstances.

Influenced by the English legal conception as to the role of administrative law, these systems left a great deal to the discretion of the executive power. The basic principle which provides that administrative law is concerned with issues such as institutions, powers and procedures only when they turned outward against a person or property was generally upheld in the planning systems.

For example, the plan-making technical units, their manning and working procedures were barely covered by the statutory provisions. The law focused rather on decision-making institutions, though it is obvious that the functioning of the latter depends to a great extent on that of the former. For the same reason, institutions and procedures regarding governmental positive planning was also largely in the realm of the executive.

However, the statutory provisions regarding the structure of the planning decision making institutions under the Mandatory and Israeli systems had been by far more detailed and interventionist than in the English system. Here the delicate socio-political circumstances induced the legislator to dictate a particular structure rather than rely on the executive's discretion.

In most other social and economic policy spheres, where the government intervened without a formal statutory decision making process, its discretionary powers were less restricted than in town planning. The alternative to the centralised planning process then was not less governmental intervention in the market mechanisms, nor greater public participation, but rather wider administrative powers and thus greater opportunity for inefficiency and even corruption. The limitations on the administrative discretion which derived from the binding planning process had thus great importance in building up the legitimacy of the new governmental institutions.

Furthermore, the inherited process restricted the administration by imposing procedural and substantive duties which largely protected private property rights. These accorded well with the liberal perceptions and the ideology of individualism held by large groups within the urban population. Though these conflicted with the Socialist-Zionist perceptions of the Israeli leadership, they seemed to provide an acceptable mode of administrative operation during the formative stage.

However, breaches in the legitimacy of planning as a rational and efficient decision making process gradually surfaced during the first stage of the Israeli system. These can be attributed less to the stagnation of the statutory structure than to the factional political utilisation of planning powers by the decision makers. Obviously the needs of Israel as a rapidly developing country required a much more co-ordinated environmental policy than that which could be achieved under the old Mandatory process. The seemingly orderly process of decision making proved narrow and limited in scope and form. The loose framework of decision making with its wide discretion allowed easy manipulation of power by the decision makers. Instead of real participation of the public, the statutory process provided the opportunity for lobbying and exerting pressure by powerful groups and individuals. Thus, paradoxically, the statutory process which gave rise to hopes for an efficient and democratic administrative process lost, during the first stage, most of its legitimacy [14].

As a result, the second stage in the evolution of the Israeli planning system saw much greater public concern with the professionalism of the system. This concern was based on the new developments in the planning profession in the Western world, and the planners' claim for objective, rational, apolitical and professional planning activity [15]. These new developments since the mid-1960's stemmed from the subjection of planning to a scientific basis of which the origin was the natural sciences. "Systems approach", "decision theory" and other methodologies were applied to town planning programmes. Though some of these theories did come under criticism for their inapplicability to complex environmental circumstances, they did lead to significant changes in governmental planning activity.

In Britain, they broadened the process to include more integrated socio-economic-physical planning. Structured plans, independent of local plans, allowed concentration on strategic policies beyond and above detailed land use provisions. The methodology of plan making was also influenced by the models of "rational comprehensive" decision making.

The enthusiasm with which the new dimension of town planning was received in Britain is expressed in the following statement: "It legitimises governmental planning by divorcing it from historical stigmata and diffusing it of political dogma" [16]. Not everybody would accept this statement in regard to the British contemporary

planning process and least of all to the Israeli planning process. In Israel the influence of the "rational comprehensive" models on the statutory process has been relatively weak.

For example, McLaughlin's model [17], which is a one of the more well-known plan-making models, involves six consecutive stages: 1) Decision to plan; 2) Goal formulation: identification of objectives; 3) Study of possible causes of action with the aid of models; 4) Evaluation of alternatives by reference to values and costs/benefits; 5) Action through public investment or control over private investment; 6) Review/monitor the state of the system. The final stage leads again to the first and thus the process repeats itself.

The analysis of the Israeli process, in the light of McLaughlin's model, reveals that, in theory, most of these stages are permitted to take place within the statutory framework. However, the authorities are not required to use new methods and techniques, since the loose framework leaves much of the actual plan making stages to the discretion of the planning institutions.

The decision to plan became under the law compulsory in certain cases. The legislator itself dictated that regional plans and local outline plans are necessary tools and then prescribed time limits for their preparation. Yet the decision to prepare national plans are discretionary and may result from an evaluation of the problems. The statutory requirement that at an early stage a "notice of preparation of Scheme" be published allowed the accomodation of the first two

stages of McLaughlin's model within the statutory process, in that such notice would signify both the decision to plan and the identification of the objectives. Further, the statutory stages ending with the deposit of a scheme may correspond to McLaughlin's third stage of study of possible courses of action. The hearing of objections and the final decision as to the approval of the scheme may signify the fourth stage of evaluation of alternatives. McLaughlin's fifth stage, in which actual implementation through public and private sectors takes place, is generally beyond the scope of the statutory planning process. The law provides tools for expropriation of land and collection of betterment tax, both necessary for public development. However, the actual implementation of the plan, either by public or private sectors, are in the hands of the respective sectors. Finally, the statutory powers of cancellation, variation and suspension of schemes may be regarded as an inducement to monitor and review the situation, which could lead to a new planning process.

A formal comparison of this kind may be misleading if a review of its potential use would overlook the fact that in practice the decision making process is carried out in Israel in a rather superficial manner. Open-ended as it is, the statutory framework encourages haphazard rather than systematic consideration. The statutory minimum tends thus to become the acceptable standard.

A gap between rational comprehensive models and the statutory planning process can also be seen in the British system. Malcolm Grant points out that "an essential element of the model is the

adoptive process based upon monitoring and that it envisages a continuous process. But in translating the model into the format of statutory planning, much of its logic has been lost. The formalities and delay surrounding plan preparation and the complexity of processes of urban change have long precluded effective monitoring and speeding revision" [18].

This is also valid in regard to the Israeli system. However, a more substantive cause for such a gap in Israel should be pointed out. This is the executive orientation of the theoretical models, as opposed to the regulative nature of the statutory planning process. The models view plan making and its implementation as stages in one continuous activity. Such a view is mostly relevant in regard to executive bodies. Yet the statutory planning has been based on an institutional separation between planning and its implementation. The latter is vested with public and private sectors, which are totally distinct from the bodies in charge of the former. Though the current Israeli planning process acquired new elements of positive planning, its basic regulative nature has not been changed. However, the new elements which are particularly expressed in the introduction of statutory national and regional planning imposed much greater administrative responsibility on the planning institutions. This responsibility is aimed at achieving, through the planning process, greater coordination between the forces acting in the physical development market and in the wider environmental sphere. The degree of such coordination is becoming the main yardstick of evaluation of administrative efficiency in the planning process and in turn of the government as a whole [19].

The complex structure of modern administration and the accumulation of many kinds of knowledge and experience in its various branches made coordination of both organisations and specialised knowledge highly desirable. Such coordination in fact facilitates social interaction and it is thus an important measure of social control.

As demonstrated above, proliferation of separate institutions exerts influence over different aspects of the environment. Since these aspects often overlapped, resulting in inconsistencies and contradictions in policies and decisions, coordination at the organisational and functional levels became one of the prime objectives of statutory planning. In order to achieve this objective emphasis has been placed on coordination through both the design of the planning machinery and its procedural patterns.

It is necessary here to distinguish between external and internal coordination. External coordination means coordination between the statutory planning machinery and other social, political and administrative centres of decision making, while internal coordination is related to the relationship between planning institutions within the hierarchy of the statutory planning machinery.

These can be illustrated by some examples from the abovementioned systems. For instance, some statutory planning institutions under the Mandatory and Israeli systems consisted of representatives of various central and local government bodies and different public organisations. These representatives were expected to form channels of communication between the different agencies and the statutory machinery so as to achieve consistent planning and harmonious implementation. This can be seen as an expression of external coordination. Another example is the composition of the lowest level of planning institution under the Israeli system (i.e. the local planning commission) which include representatives of the higher institutions in the hierarchy (i.e. the district planning commission). Through the representatives, coordination between the two levels of the planning machinery is expected to be achieved. This can be seen as an expression of internal coordination.

The English system provides somewhat different examples. Under its current structure the Department of Environment is the governmental agency responsible for planning local government, housing and public works. Since the Secretary of State for the Environment serves as the highest planning authority, "external coordination" between these agencies is at the same time "internal coordination" within the statutory machinery itself.

So much for the statutory attempts at achieving coordination through structural design. The main question is, however, the relation between the attempts and actual results. The systems

described above provide different answers as to the degree of success of such coordination and the effect on the administrative efficiency of the respective systems. Parts I and II of this work hopefully make it clear that coordination has been in general the "Achilles Heel" of the planning systems. Appraisal of the various reasons behind the lack of external and internal coordination leads us to consider the political factor in the statutory planning machinery. This is so since coordination has been not only a way of achieving administrative efficiency per se but more broadly as a way of settling differences and resolving conflicts which were rooted in political-ideological perceptions and social values [20].

Given this use of coordination, it has been found fruitful to consider the correlation between the degree of effective coordination and the magnitude of the socio-political conflict between the agencies which were subjected to that coordination. Some examples serve to demonstrate this correlation.

Under the Mandatory system, coordination between the various agencies of the central government through the design of inter-departmental planning commissions achieved a relatively high degree of success. This can be attributed to the shared ideology which prevailed among the various branches of the administration. As elaborated above, under the colonial ideology regulative-restrictive planning was pursued. Contrasting with this were the mid-1930's in which there were signs of discoordination between government agencies. This was somewhat of an exception, which proves the validity of the general rule since it can be attributed equally to

differences in political interests between the branches of the Mandatory government. In that stage some governmental agencies (notably the army) pursued a different policy of positive planning motivated by imperial strategic objectives. This policy was not in line with the restrictive planning of the statutory machinery.

Turning to English and Israeli contemporary systems, when the government consists of one party as in Britain, coordination between the various central government agencies is far greater than between similar institutions in a system such as the Israeli one which consists of government by coalition. The political and ideological differences between the partners of a coalition lead to the essential difference in the level of coordination between the two systems.

It is therefore not surprising that the overall picture resulting from actual functioning of the planning machinery in Israel is one of arbitrariness, inconsistency, waste, and in some cases even corruption. This planning process, almost counter to a coordinated, rational and efficient decision making process, weakens public trust in governmental institutions and therefore reduces the power of the planning process to act as an efficient mechanism of social control.

B. THE EFFECT OF THE PLANNING PROCESS ON THE ENVIRONMENTAL SPHERE

The second aspect of the system's economic role is more specific than the first, which centred on the planning process as a method of governmental decision making. The economic aspect focuses on the application of the process to the environmental sphere with the view of weighing the social costs and benefits and thus achieving greater efficiency in the utilisation of the country's scarce resources.

The goal of achieving efficiency in physical development emerged in Britain after the post-industrial experience, being contrasted with the operation of the development market. As John Ratcliff [21] says:

"In the absence of town planning, land would be apportioned between competing uses by the price mechanism and the interaction of demand and supply. In this free market situation, land would be used for the purpose which could extract the largest net return over a foreseeable period of time but experience has shown that, unfettered, the market can consume resources in an ill-conceived and short-sighted way, creating almost unsurmountable problems for generations to come. Moreover, the competition engendered in the private sector where laissez-faire conditions prevail can all too often breed waste. The private sector developer seeking to maximise his personal profit frequently neglects the provision of both social services and public utilities. The very need for planning arose out of the inequality, deprivation and squalor caused by the interplay of free market forces and lack of social concern prevalent during the nineteenth century. Furthermore, unplanned, these forces combine to produce the fluctuating booms and slumps that epitomise private sector instability".

The link between the economic role and social control is clearly expressed in these words. Since efficiency in the environmental sphere has been assumed to serve the public good, its ultimate purpose can be regarded as the provision of greater stability in the social order [22]. Was this the case under the Mandatory and Israeli systems?

As shown above, on the eve of British rule in Palestine, conditions were far from the laissez-faire model. There was no free operation of the land development market. Physical development, on the rare times it was initiated by local forces, was subject under the Ottoman law to governmental direction - or rather restriction - through the use of building permits. Though to government officials the development control powers were merely measures for collecting additional revenue, the potential government intervention in this sector did not allow even theoretical operation of a free market.

However, it is clear that despite the existence of development control powers, the quality of the physical environment itself was of the least concern to the Ottoman authorities, and pressing problems faced by the British in Palestine required immediate attention. Government intervention in the regulation of physical development was deemed necessary in order to achieve a higher quality in the physical environment [23]. Thus the British legal framework of town and country planning was adjusted to fit the conditions in Mandatory Palestine.

The fact that Mandatory planning law was rooted in contemporary British planning legislation allows utilisation of the latter's underlying principles for analysis of the former.

The statutory planning systems in Britain and Palestine were centred around the physical environment, largely viewing this environment from a local perspective. In retrospect, such a planning outlook might appear limited and narrow; however, in view of the circumstances prior to the introduction of the respective planning systems, this was in fact an innovative move. The statutory scheme was oriented towards producing clear and rigorous pictures of the physical development of towns and villages: It expressed the ultimate physical goal through a desired pattern of land use allocation.

Efficiency in the utilisation of physical resources was expressed in terms of zoning, allocation of development rights, provision of public services and public utilities, transport routes, recreation areas and the setting up of building regulations.

The planning process was by nature a regulative process which largely relied for its implementation on the forces of the development market; however it cannot be disassociated from its origins in the western industrialised world.

Regulatory planning emerged in the second half of the nineteenth century, generated by the need for radical improvement of the appalling living conditions of the post-Industrial Revolution period [24]. It is said that the British town planning movement of

that time was concerned with comprehensive social solutions to the "physical fabric" as well as to "the life and activities contained within the town" [25]. However, this was not to be the mainstream in the evolution of planning. From public health and housing reforms, planning regulations became the ultimate method of tackling the problem of inflammable, insanitary and inadequate living conditions which required space, light and air. These planning regulations were applied uniformly to towns in general.

"Zoning" as a regulatory device to solve urban problems - separating towns into various zones according to different land uses, height of buildings, their capacity and so forth - was first developed in Germany at the end of the 19th century and was adopted in Britain and the United States at the beginning of the 20th century [26]. This signalled a definite break and move from the laissez-faire system to one of extensive regulation and represents the entry of government into a thriving development market where both private and public bodies operated relatively freely.

The traditional concept of town and country planning is expressed in Keeble's description of planning as "the art and science of ordering the use of land and the character and siting of buildings and communication routes so as to secure the maximum practicable degree of economy" [27].

The terms "master plan" and "blueprint planning" were innovations of the 1930's which contributed to the "design orientation" [28] and the legislative "rule model" [29] of planning.

The essence of statutory planning was the distribution of land between competing uses, as can be illustrated in detail on a map and expressed in building regulations. It was seen as a kind of totally rational and value-free process of rule making and adjudication of conflicts. Ends and means could not be directly related to non-physical objectives such as the composition or distribution of population, ensuring of sources of employment or encouragement of educational systems [30]. At that time planning was considered only as an attempt to formulate the principles "that should guide us in creating a civilised physical background for human life" [31].

The attempt to achieve more efficient use of the physical environment by concentrating on regulative planning was based on the reality of the western world where market forces existed and could react positively to the provisions of the statutory schemes. On this basis it was felt necessary to guide the development forces of private and public bodies, while operating "within the wisdom of the market which itself is based on individual entrepreneurial decision making" [32]. In these circumstances, the content of social control can be said to result from the interaction between the formal planning provisions prescribed by the authorities and the informal planning implementation of the development market forces.

Circumstances in Palestine were somewhat different. As described above, during the first stage of statutory planning in Palestine the local market forces were very weak. Improvement of physical conditions in existing towns could not be changed by the local populations without government intervention. More efficient

utilisation of the land and other economic resources required not only passive-regulative planning in the British style, but executive-positive orientation. It should be stressed that the 1921 Ordinance did take some innovative steps in this direction, providing local authorities with some positive tools for expropriation of land for public purposes and financial means through the betterment tax. This was nonetheless no more than an attempt to create a new local force in the development market, thus increasing its capacity. The central government kept to its colonial policy of limited involvement in positive development [33].

The fact that the market forces were much weaker than in more developed countries gave the planning process in Palestine a different meaning as a mechanism of social control. The modes of social behaviour in this sphere were exerted more from the formal-official planning provisions of restrictive implementation than from the deeds of the development market. In such circumstances the economic role of the planning system, efficiency of the physical environment, was hardly fulfilled.

During the second stage of the Mandatory planning system the potential of local development markets grew substantially in relative terms. This was a result of growing Jewish immigration from Europe and the establishment of political and economic institutions. However, the needs of the population in terms of physical infrastructure, roads, housing, recreating areas, etc., also grew, while World War II and the internal strife in Palestine led to limited public and private investment in the physical environment. At

the same time the Mandatory official policy was to restrict physical development of the Jewish sector in the name of striking a balance between the rival communities; hence the planning process operated outside "the logic of the private market". This obviously conflicted with the interest of the Jewish sector and the result was gross breaches of planning regulations at the local level through cooperation of the local authorities and the local development forces.

In such circumstances it is obvious that the quality of the physical environment could not be improved by the planning system. The system's effect on the modes of social behaviour became complicated: from a national viewpoint, the formal planning provisions imposed by the Mandatory government provided for a general policy of restrictive planning while the statutory provisions at the local level imposed by the local authorities tended to become very loose. Actual implementation of development activities by the public and private sectors often took little notice of the statutory planning provisions [34]. The interaction between these formal and non-formal elements led to a situation where the economic role of the system, i.e. efficient utilisation of the resources for the benefit of the public at large, was hardly fulfilled.

The limits of the existing property market mechanisms in their ability to cater for social benefits and public needs were particularly striking after the establishment of the State of Israel. Concentration on regulative planning while relying on the existing property market for implementation was considered insufficient for

the task of solving housing and other physical problems. In the circumstances, the solution was the establishment of a new public-governmental development market for more positive planning which lay outside the statutory planning system.

During the first stage of the Israeli system the passive attitude towards physical planning was changed. This period was characterised by the great involvement of central government in positive planning with emphasis on centralised implementation of policies. As described previously, the central government took charge of establishing new towns and new neighbourhoods in existing towns in order to absorb the growing immigrant population. This policy which was the mainstream of governmental planning strove to achieve a balanced dispersal of the country's population. Industry was also directed to create employment in the northern and southern regions and the national transport network was designed to meet the new requirements which resulted from the population distribution policy.

However, as mentioned the rapid physical development of the 1950's was largely outside the realm of the statutory planning system. It thus had many characteristics of informal social control, though exercised by the government. Centralised action by the government was enabled under the inherited Mandatory legal system which gave the government wide powers to intervene in socio-economic fields; yet it did not apply the statutory planning process to development activities undertaken by the government itself.

This legal position suited the prevailing perception of pragmatism which considered formal and broad statutory planning as incompatible with the pressing needs of the times. This may explain to some degree the fact that the statutory planning system remained unreformed for such a long period. Further, the regulative planning system remained dependent on the economic logic of the private market for its implementation, while the government-public market was self-sufficient and thereby independent.

The achievements of the government's positive actions in land development during Israel's formative stage should not be dismissed, though they were achieved at a high cost. The government-public sector was motivated largely by social and political needs even when these were inconsistent with economic logic. In terms of greater efficiency of building development, accomplishments during this stage were phenomenal, though far from perfect. The environment was still viewed in physical terms and thus the dominant policy was to make efficient the physical design and use of land while social, educational and economic planning aspects lagged behind. The gap between the parallel mechanisms of regulative and positive processes widened and, furthermore, the government did not have an authoritative planning body for the coordination of its activities; sectional planning and development were carried out independently by the various executive ministries. Powers were also used to advance narrow factional interests at the expense of the public good.

The second stage of the Israeli planning system saw some organisational improvement in the coordination of the formal and informal mechanisms of physical planning and development. It saw the establishment of reforms in the planning organisation and process whereby some of the past mistakes and wasted resources which were a result of planning for sectional and factional interests could be corrected, though some had already done irreparable damage to the environment.

It should be pointed out that despite the abovementioned manifestations of waste and inefficiency, non-statutory governmental positive planning greatly contributed to raising the quality of the physical environment and helped the government to establish its authority and legitimacy in the country. In this respect it was an effective mechanism of social control.

However, with the years the problems of physical land use were gradually seen as only one aspect of more comprehensive environmental problems. The words of Rittel and Webber in their analysis of the nature of planning in the 20th century are relevant to the Israeli situation. They say: "the tests for efficiency that were once so useful as measures of accomplishment are being challenged by a renewed preoccupation with consequences of equity" [35]. In the Israeli society the socio-economic gaps which began to surface during this first stage were also reflected in the growing difference between the physical layout of the new towns and the big cities. The facilities provided in the former were of a much lower quality than

in the latter. The problem was intensified by the identification of the new towns with immigrants of Oriental origin, while the veteran population of European background was concentrated in the big cities and more prosperous rural settlements. The socio-economic rift between these groups to some extent posed a threat to the national consensus and thus to the stability of the political and social system.

The overall picture of the results of the directed development process is thus a mixed one. On the one hand the process contributed to the creation of a new society and was thereby a successful mechanism of social control. On the other hand the high social price paid for achieving such physical progress and efficiency pointed to the weakness of the process in its inability to provide stability to the political and social systems.

In the second stage the Israeli planning system was reformed and given a new statutory cloth. The reform was achieved in an era when planning in Britain and other developed countries underwent re-evaluation as to its proper basis, philosophy, scope and procedure. As mentioned, a move was made away from the limited physical view of planning with a new perception of town planning as a system entailing not only physical land use but an interplay of three sub-systems: physical, social and economic. Furthermore, the realisation that the aims of planning are based on socio-economic foundations - although the means of achieving them are expressed in physical terms - was demonstrated by the shift towards an extension of the scope of planning [36].

Static planning was found to be incompatible as an adequate solution to most social and economic problems. Therefore a new "process planning" was developed, a dynamic concept which emphasised a continuous process of plan making and performance analysis leading to necessary adjustments.

An additional move was made by the acceptance that for effective guidance of change, town planning must consist not only of coordinated policies in a wide array of fields, but must also use a broader means of implementation in these fields. Planning became conceived as part of the field of politics, since it was "essentially a reallocative process whereby resources were redistributed throughout the community" [37].

In Britain these developments led to the introduction of "structure planning" or "strategy planning" by which goals, strategies and policies are formulated. Under this comes local planning which is of a lower level and in which the policies are applied in detail. In addition, more positive action is now allowed by statute for "steering the forces for development and change in society in a desired direction" [38].

In Israel the reformed planning process was also somewhat influenced by these new developments. The main step towards a broader scope of planning was made by the introduction of statutory national and regional planning. These new levels allowed the incorporation into planning of strategies and policies which could guide planning

at a local level. Positive planning by the government was exercised within the statutory planning system and, to a large degree, within the logic of the market. This step obviously allowed more efficient utilisation of the country's physical resources. However, as described previously, the great potential of this system has not been fulfilled in practice and little improvement has been felt during the years of the second stage. Rather, the old regulative perceptions were still applied to the new levels, leaving positive planning outside the statutory system. Furthermore, the extended scope of planning was only made in spatial terms and was not matched by an extension in the scope of the planning subject matter. Thus the relevance to the statutory physical planning process of aims, considerations and means in the social and economic spheres remains unclear [39].

At the local level no significant change was introduced in the planning process. Not only were no improvements felt but public expectations of the planning system had grown, and the system's legitimacy faced a grave crisis. Plan making which requires long and cumbersome procedures becomes an unworkable process and since only parts of the frontier schemes had been prepared in practical terms, the structure lost much of its logic and consistency. The static perception of a scheme was not replaced by a more dynamic outlook and only limited steps were taken to involve the public more actively in the process.

The planning process during the second stage indeed lost the public's appreciation which it had earned for its achievements in physical development in the first stage and at the same time was left with many unsolved problems. Currently the system is regarded as inefficient, even in the limited sphere of physical land use planning.

CHAPTER 11. THE SUBSTANTIVE CONTENT OF PLANNING AND SOCIAL
PROGRESS

The substantive content of planning, as seen in the systems described above, can be said to be an expression of social control with the following set of elements:

The substantive content of statutory planning is considered to be those formal normative provisions in the environmental sphere which were made legally binding. These provisions provide a basis on which social interaction was exercised. Even when such provisions were limited to regulation of land use and consideration of land rights, they had a wider social significance through their affect on life of the general public. An underlying goal of these provisions was stated in vague terms as social progress, public good or human welfare. However, their meta-goal is considered here to have been the establishment and maintenance of the socio-political order.

The elements of this description of substantive content of planning will be now further elucidated during the discussion of the content of the planning provisions and their objectives in the various systems.

The introduction of the statutory planning systems was innovative in that they replaced with, or added to, the existing informal modes of social behaviour in the physical environmental sphere some formal, legally binding provisions.

The content of the statutory planning provisions which were introduced under the Mandatory system can be classified into three main groups: 1) Provisions which strove to achieve coexistence between the various owners of property rights; 2) Provisions which strove to achieve coexistence between the general public and the property owners; 3) Provisions which strove to achieve coexistence between the different national communities of Palestine.

All these groups, it is argued, ultimately strove towards coexistence between the Mandatory rule and the local population and thus to the maintenance of the socio-political system.

This classification of the Mandatory planning provisions is, in general, relevant also to the Israeli planning system. The difference lay in the third group of provisions which, under the Israeli system, did not emphasise coexistence between Jews and Arabs, but between the various social groups of the heterogeneous Jewish society. The groups of provisions under the Israeli system strove to maintain the democratic socio-political order of Israel.

A. COEXISTENCE BETWEEN THE OWNERS OF PROPERTY RIGHTS

Though statutory planning provisions are generally considered to fall into the sphere of public law, in the systems analysed above they often include elements which were aimed at regulating the socio-legal relationships between neighbouring and other inter-related property rights.

This may seem an artificial division but for the purpose of the discussion here the elements of private law are separated from the more common planning elements aimed at providing for co-existence between general public and private property rights. The former elements can be referred to as micro-planning provisions. In order to prevent "bad neighbour" development, micro-planning provisions often imposed rights and restrictions such as: size of plots, building densities, setbacks and building lines, open space surrounding buildings, height of buildings and conditions for use of land. Furthermore, they sometimes structured the property rights themselves by providing for partition or combination of plots with or without the consent of the owners.

It is worth stressing that micro-planning provisions are those which do not seek any special advantage for the general public; nor do they affect the general public in any significant manner. Nonetheless, the mere regulation of co-existence between the owners of property rights should be considered as a method of serving the public interest. This is so since the micro-planning provisions and

the legal provisions imposed under property law, or under the concept of nuisance, had a common goal which is to enable beneficial use of land within an acceptable balance of interests of the different landowners and land users. This is, in turn, aimed at preventing conflicts and ensuring social interaction, justice and stability in the social order [1].

The importance of micro-planning provisions as tools of social control and social stability can be demonstrated in regard to conflicts which arise among people of lower status. As Black and others [2] point out, the poor and the disreputable rarely use law against their social superiors, or among themselves. Yet for these people the use of micro-planning provisions through the hearing process of objection to planning proposals has been much easier, cheaper and feasible than the regular legal process [3]. They often benefit from the "corporist decision model" [4] of planning decision making much more than from the regular "adjudicative dispute resolution" of law courts.

The mutual relations between the micro-planning provisions and the rules of private law were multi-faced. In general, the planning provisions which reflected the public point of view superseded any private agreement between neighbouring landowners. Nonetheless, in some cases the planning provisions themselves allowed the relevant property owners to reach an agreement as to the use of land, within certain prescribed limits [5].

From another point of view, the planning provisions did not replace private law principles. For example, planning provisions which allowed building operations of any kind did not stop an injured party from taking action against that building activity under the law of nuisance. Moreover, in some cases the planning provisions facilitated legal proceedings in private law; for example, under the law of tort known as "breach of statutory duty" [6].

However, a major difference between the provisions of property law and town planning rules was that while the former provided general principles and a permissible framework, leaving much of its content to be agreed upon by the interested parties, or to be decided upon by the courts, the latter prescribed a detailed code of rights and restrictions as to the use of any single plot of land. The planning authorities which designed and imposed these detailed planning rules strove to balance the different private property interests, thereby playing an important role of social control.

The task of these planning provisions may correspond to what Prof. Foley [7] defined as the first ideological proposition of British town planning; i.e. "to reconcile competing claims for the use of limited land" so as to provide "consistent balanced and orderly arrangement of land". Foley rightly points out that this seemingly neutral task carries an ambiguity as to what constitutes this balance and orderly management, thus leaving the decision makers wide discretion for the application of their values and perceptions.

This is actually the situation, whether decisions are taken by the law courts in the sphere of property law or by planning authorities in the sphere of statutory planning. Prof. McAuslan, when dealing with judicial regulation of land use via nuisance, raised the question as to the merits of courts as opposed to more specialist bodies for the resolution of disputes regarding unneighbourly developments [8].

In his article "The Limits of Law in Urban Planning", Prof. Jowell [9] identified a move away, within the British planning system, from the "judicial model" where decisions are made according to relatively objective rules and standards to a system based upon bargaining and negotiation. One of the explanations given for this is the limitations in the law's ability to decide on complex planning problems which cannot be solved in accordance with clear-cut authoritative guidelines, but which require value judgements and subjective evaluation of the nature of the problem and its solution. Such problems require room for manoeuvre and compromise.

Jowell's thesis can be applied to the planning systems described in this work. It is relevant not only to macro-planning problems, in the sense of problems which involve a balance between public and private interests, but also to micro-planning provisions which seek co-existence between the various property rights. This latter type of provision was also the outcome of planning bargaining and negotiation rather than of a rational, objective adjudication of conflicts.

During the Mandatory period, the British planning authorities were considered to exercise this type of micro-planning power with a relatively high degree of impartiality. They seemed to be above the internal politics of the local communities and were considered to be less open to influences than local planning institutions. They had the benefit of being administrative bodies with greater expertise in planning problems than the law courts and kept wide discretions for themselves while providing local planning institutions with the as precise planning provisions as possible.

However, two points must be stressed here. The first is that the impartiality of British decision makers was lessened by their own subjective values and perceptions as to what constitutes a just balance of interests. For example, the British Liberal ideology which preferred private initiative over public intervention was often reflected in Mandatory micro-planning provisions. This ideological perception was one of the reasons why Mandatory provisions rarely gave priority to Jewish national institutions over private landowners, though the former were acting in the interests of the general Jewish population, while the latter were usually concerned with personal interest. It also explains the Mandatory planning authorities' apathy to, even collaboration with, speculative use of land by allowing division of land into very small plots with no due respect to the requirements of modern neighbourhoods.

The second point to be made here is that the British were beyond politics only in those limited cases where the only concern was to balance diverse private property rights. Since most planning

decisions involved public and governmental interests as well, the British decision makers were usually strongly influenced by their own political interests in Palestine.

The use of micro-planning provisions in the sense of regulation of relationships between private property rights parallel to the tools of private law continued during the first stage of planning in Israel and was reinforced by the Supreme Court. In the words of Justice Landau: [10]

"It appears to me that alongside the benefits derived to the general public from statutory regulation of building and town planning, such legislation provides additional specific benefits to certain individuals or types of person. This is so whenever the right of the landowner to build on his land as he desires is restricted by the legislator in order to benefit and protect his neighbours. Statutory provisions which regulate the relationship between neighbours, such as provisions which impose setbacks and building lines, are undoubtedly for "the benefit or protection" of the neighbour. I would go further and say that ... they create rights, in the full sense of the term, to the neighbour".

Obviously, micro-planning provisions under the Israeli system were also influenced by prevailing values and ideologies. As mentioned, the socialist-zionist ideology which led to large-scale publically organised development favoured the legal provision which exempted the State when acting in the capacity of landowner and developer from statutory planning restrictions. The public sector was given superiority over the private sector in the first stage of this period.

Furthermore, even the balance which was attempted between private property rights was often subject to planning bargaining and strongly influenced by factional-political considerations taken by the planning institutions. This obviously led to social conflicts, loss of creditability of the local planning institutions as objective, rational arbitrators of property rights and to the detraction of the effectiveness of the micro-planning provisions as mechanisms of social control.

The shift in emphasis from collectivism and ruralism to individualism and urbanism led, over the years, to greater public concern with the way development rights were distributed and how the balance of interests had been weighed. Judicial control over the administration and reviews by the State Comptroller also helped reduce factional considerations in the process of setting micro-planning rules.

However, the disappointment in the mode of administrative behaviour by the planning institutions and the contrasting wide appreciation of the law courts shown by the general public led, among other things, to a tendency to confine statutory planning to matters which directly involved the public good. In a series of judgements, the High Court of Justice ruled that it is not for planning authorities to intervene in the sphere of property law or to prevent injurious affect to an individual's rights. Whenever the "rule model" and the "judicial model" could be applied, they were considered better than a discretionary planning system.

In a recent case the Court ruled that a planning application regarding land in joint ownership need not, in the circumstances, have the consent of all the owners involved.

"The local commission", said the Court "does not have the faculties to consider and determine factual and legal controversies between joint owners of property as to whether one of them has the right to build on the land without the consent of the other; it does not have the tools to take evidence and determine its reliability; it does not have the legal knowledge to resolve such conflicts and the Regulations do not intend the commission to have such knowledge" [11].

Together with the tendency to prevent planning provisions from intruding into the sphere of private law and regulation of property rights per se, there has been growing realisation of the socio-economic nature of physical planning and the "limits of law in urban planning" which reinforced the use of planning provisions of the second group, which will now be discussed.

B. COEXISTENCE BETWEEN PUBLIC AND PRIVATE INTERESTS

Though the right to property was recognised in the Western world as fundamental and its preservation became itself a major public interest, nonetheless, the modern planning legislation was introduced in the name of another public interest: the improvement of the quality of the physical environment and thereby advancement of social progress and welfare. The public as a collective group was considered party to any arrangement of land use and its interests were given priority over private property rights. Though planning decisions did not necessarily involve conflicts between different property rights, they were almost always matters in which the private interest in land had to be balanced with the public good.

'Public good', 'public interest' or 'social progress' are all vague terms, open to a number of interpretations. As mentioned, many writers point out the fallacy in the claim for rational, objective and apolitical exercise of the planning process: they stress that determination of the political meaning of these terms in physical planning inherently involves value judgements based on ideological and political perceptions [12]. A subjective image of a desirable way of life inevitably influences the decision makers in their arrangements for land use. As Rittel and Webber write: "in a pluralistic society there is nothing like the undisputable public good; there is no objective definition of equity; policies that respond to social problems cannot be meaningfully correct or false; and it makes no sense to talk about 'optimal solutions' to social

problems unless some qualifications are imposed first. Even worse there are no 'solutions' in the sense of definitive and objective answers" [13].

The problematic issue of setting general planning objectives and solutions has been largely manifested in regard to macro-planning policies. At the local planning level the public interest could be identified more easily with physical land use provisions, while questions such as the ultimate social and economic objectives of physical planning could hardly be ignored when dealing with regional and national planning. According to Peter Self [14], the roots of the difficulties in setting clearly defined objectives, common to all spheres of public administration, are the tendency of politicians to avoid systematic policy making in order to avoid conflicts and to maintain coalitions of support. The outcome is often an inconsistent set of ill-defined goals.

Under the Mandatory system the planning perspective was formally focused at the local rather than national level. The explicit goals of statutory planning expressing the public good were to ensure public health, conveniences, amenities and welfare of the community. The practical content of the planning provisions, which were aimed at the fulfillment of these goals was, as mentioned, controlled by the British rule. Thus even when stripped of British political interests, this content reflected Western values regarding the needs of modern society and desirable urban way of life.

Foley's second preposition can be most helpful towards understanding the British perception. According to Foley, a central function of the British town planning system can be described in the following way: "To provide a good (or better) physical environment; a physical environment of such good quality is essential for the promotion of a healthy and civilised life" [15]. Foley points out the attraction to the British public of physical planning. The provision of designated space standards, density controls, large parks, playing fields and green belts accorded with British values, as did direct attack on overcrowding, congestion and physical blight which, we may add, were associated with the "villains of private property".

However, even when focusing on the quality of the physical environment, British values not only conflicted with the traditional values of the Arab community, but also with those of the Jewish sector which largely came from East European background. The imposition of the British perceptions and values in Palestine can thus be regarded as part of a colonial process of socialisation. Socialisation is considered the method by which culture is transmitted and the individual is placed into an organised way of life [16]. This term is largely associated with education of children so they may adjust to the group and society. However, it is also relevant to describe it as the way adults are involved in new social forms, absorb new disciplines and create new values [17].

The expression of the socialisation process in the planning sphere appeared in the early actions taken towards the preservation of the Old City of Jerusalem; in the planning of garden cities in the main urban areas, in the emphasis on low density, open spaces, recreation areas, road networks and public utilities; in the assignment of different functions not only to different zones within one city, but also to each of the main cities: Jerusalem, Tel Aviv and Haifa, and lastly in laying the foundations for regional outlook and inter-relationship between rural and urban areas. At the same time it also appeared in the respect shown to private property and the rights accorded to a landowner in the event of injurious affect to his property.

These basic planning principles were in sharp contrast with the traditional organic development of the Arab sector. They also acted against the short range interest of property owners in both the Jewish and Arab sectors and did not always fit the physical, social and economic circumstances of Palestine. Moreover, they often conflicted with the national interests of the respective communities. Nonetheless, they left their mark on the planning and development of Palestine and Israel, particularly on the relationship between public and private interests. It is argued here that this was not merely because of their legal backing but because of the socialisation process which the local population underwent during the Mandatory period [18].

The process of socialisation via planning continued after the establishment of the State of Israel. As described above, the most characteristic element in the social process which took place in Israel was the absorption of immigrants from all over the world. The multi-cultural composition of the population called for a socialisation process whereby the different groups could be brought into some kind of social harmony, or at least have a common basis for social interaction. Planning provisions were part of a centrally organised attempt to bring the Jews from eastern and oriental backgrounds into the prevailing western way of life [19]. The planning and building of the new towns by the government and the absorption of immigrants, largely of eastern background, in these towns provide a striking example of that socialisation process.

Again, western-type physical planning principles of low density building, public open spaces, recreation areas, zoning, hierarchy of settlements and regional and national outlooks were imposed upon a population which was, in general, unaccustomed to such planning and development ideas. However, the public good - expressed in terms of a higher quality of the physical environment - was determined after 1948 by a democratically elected government. This government was, by definition, more responsive to public demands and waves of public opinion than the previous Mandatory rule. It is true that during the first stage of the Israeli system there was a wide gap between the policy makers themselves and the new immigrants who were mostly

affected by the policy makers' decisions. Nevertheless, as shown above, this gap was somewhat narrowed during the second stage, both in planning and other spheres of administration [20].

Circumstances were such in Israel that the large-scale development projects of the 1950's were carried out by the public on public land using public resources. This removed the sting from the development projects since it prevented any great conflict between public and private interests. Such a conflict did appear in the planning of the more populated areas around the three major cities of the country. However the Israeli law was markedly in favour of the public interest, though private property rights were never disregarded completely. Since the Israeli legislator and the administration were strongly influenced by the ideologies of representative democracy and collectivism, new legal tools were given to the planning authorities, enabling them to introduce radical changes in the distribution of land between the general public and private landowners.

The years of the second stage gave rise to the ideology of individualism. The private sector was gradually re-organised as a positive development force, sometimes able to advance the interests of the public better than the public development bodies themselves. Budgetary limitations on public bodies also led to greater reliance on private initiative and planning bargaining flourishes. At the same time there was a shift towards participatory democracy and new social

groups emerged with greater involvement in planning decision making, thus safeguarding what was considered by them as the public interest.

The new balance between the public and private interests remained unchanged on the whole, without any significant shift favouring either side.

C. COEXISTENCE BETWEEN DIFFERENT NATIONAL COMMUNITIES AND SOCIAL GROUPS

Physical planning could not be presented for long as an end in itself. Despite the socialisation process via physical planning in Palestine and Israel or rather as a result of such processes, the inherent fallacy in the planning objective of advancing merely the quality of the environment for the good of the general public was soon revealed. This was particularly striking when planning was viewed from a broad national planning perspective. The bitter conflicts between the Arab and Jewish communities in Palestine and the wide gaps between Jews of Oriental and European background in Israel both led to the realisation that physical planning could not advance the interests of all groups equally, but served some groups more than others. The conclusion that planning is a political activity which undergoes changes under varying political systems and in line with different ideologies [21] is self-evident in these systems.

Physical planning thus became no more than an intermediate goal to further social, cultural, political, economic and strategic goals. Moreover, as mentioned its meta goal was to facilitate the prevailing social order and thereby contribute to the social stability. Foley's third proposition, named "the social ideolog", points to this wider context of physical planning. Under this proposition, "town planning, as part of a broader social programme, is responsible for providing the physical basis for better urban community life" [22]. Foley then

describes the ideal patterns of social-spatial interaction which accorded with British values; for example, small communities in low density residential areas. Foley's social ideology is, in principle, relevant to the planning systems of Palestine and Israel, despite the differences in the content of the social programmes and the patterns of social-spatial interaction between the British and these systems. It should however be stressed that the social content of planning was not, in general, prescribed directly by the planning laws, but was determined by the authorities at the time.

Social programmes during the Mandatory period varied from one sector to another. The Jewish sector was united in the view that physical planning and development should facilitate the Zionist ideology; i.e. the establishment of a Jewish State. This led to a basic positive planning precept which rose above and beyond internal controversies concerning the nature and content of the desired social-spatial interactions in such a State. The Arab sector, on the other hand, held a negative attitude towards physical planning, since it realised that any change in the physical status - quo was detrimental to its own socio-political goal of an Arab State embracing the entire territory of Palestine.

The British stood between these controversies: their rule served their own political-strategic interests and preservation of this rule became an important tool. Regulative planning systems of the Mandatory type allowed on the one hand some positive planning while at the same time it restricted physical growth. The resulting balance between the two sectors was effectively held during most of

this period, though each sector obviously had reservations as to the British use of its planning powers.

The statutory planning framework in Palestine was broad enough to include traditional forms of social-spatial interactions such as the Arab village as well as innovative forms of collective settlement such as Kibbutz and Moshav; to preserve the old-type Arab town and allow establishment of new Jewish garden suburbs; to permit the growth of the Jewish population which was guided to the coastal plain and the big cities while maintaining an Arab majority which was dispersed throughout the country. In the name of preservation of the status quo, the government pursued a flexible political policy which strove towards co-existence of rival communities under Mandatory rule.

An expression of this co-existence was town planning in Jerusalem. As explained above, Jerusalem was preserved as a cultural, political and administrative centre while its controlled growth did not include significant economic or industrial development. In some respects the planning of Jerusalem could be regarded as part of a broader colonial phenomenon. In his analysis of the British colonial experience in the sphere of town planning, A.D. King [23] provides some examples which resemble the planning process in Jerusalem and other parts of Palestine. Regarding India, King writes:

"The major city building exercise during two hundred years of informal and formal colonial rule - the planning and construction of New Delhi (1911-1940) - involved the creation of a capital city almost entirely devoted to administrative, political and social functions, with virtually no attempt made to plan for industrial development" [24].

As King points out, this repeated itself in British colonies in Africa:

"The built environment of the 'ideal type' political administrative capital was characterised by those buildings housing the key institutions of colonialism: government or state house, the council or assembly buildings (if any), army barracks or cantonment, the police lines, hospital, jail, government offices and the road system, housing and recreational space for the expatriate European bureaucracy and, occasionally, housing for local government employees" [25].

In the African colonies too the official planning policy under which urban centres were established expressed "urbanisation without industrialisation" [26].

In explaining the British urban planning policy in the colonies, King applies the "dependency theory" [27]. This theory advances the notion that the interests of the developed capitalist society of the home countries were best served by designing dependent peripheral economies in the Third World. The spatial expression of this economic dependency, i.e. lack of industrial infrastructure, was meant to halt the progress of the colonies into independent economies. This theory can also be related to the circumstances in Palestine where the political interests of the Mandatory power were superior to its economic interests: in fact, political dependency can be considered the main objective of the British rule in Palestine. One of the ways this objective was advanced was by restricting the physical and economic growth and accordingly the political power of the Jewish sector, while at the same time showing indifference to the physical and economic requirements of the Arab sector. Coexistence of the two rival sectors in the environmental sphere was thus a way of ensuring stability of the Mandatory rule.

Turning to the internal composition of the respective sectors, it is asserted that the social programme to be achieved through physical planning was an attempt to enable co-existence between the various classes and groups. The Jewish sector is used in this work as the main example of such co-existence. During the Mandatory period the majority of the Jewish sector was composed of urban population which held the ideology of urbanism and individualism. However, the leading powers of the Jewish community were the Socialist-Zionist parties which held views of collectivism and ruralism. The central communal institution pursued their policy of positive planning mainly in the rural sector, though it allowed major urban growth through both public and private capital. This was due to the fact that any form of social-spatial interaction was considered in the best interests of the common goal of the establishment of a Jewish State. Thus different types of towns and neighbourhoods were established by the various social groups, providing for the different physical, social, cultural and economic needs of the heterogenous Jewish society.

Differences within the Jewish community became more marked with the establishment of the State of Israel. The main divisions included urban and rural populations, socialists and liberals, religious and secular, new immigrants and veterans, though the most serious division was between Jews of Oriental and European background. The main positive planning effort in the first years was to settle the new immigrants, largely of Oriental origin, in the newly established towns throughout the country. By this centralised national initiative

the absorption of these social groups was made possible, providing them with the basic physical and economic means to start a new life in the country. However, with the years the gaps between the various sectors grew wider, while at the same time the expectations of the disadvantaged groups also grew higher, thus shaking the social solidarity within the Jewish community. Several social programmes aimed at the redistribution of public resources and social justice were prepared and put into practice. These were reflected in statutory national, regional and local schemes which encouraged the dispersal of population and industries and the generation of employment opportunities in the new towns and outlying regions. The "Project Renewal" is a recent example of this type of comprehensive effort at bridging the gap between the more advantaged and less advantaged sectors.

The ultimate task of positive and regulative planning systems has been to facilitate coexistence between different groups and sectors of a heterogenous society.

CHAPTER 12. PLANNING IMPLEMENTATION AND THE SOCIAL ORDER

The stage of implementation of planning is that which turns the whole process into a purposeful social activity. In many decision making models, implementation is an integral part of the entire planning process; in some models, it is the stage following the planning process.

For Keeble [1], "planning is not the carrying out of development; it is the creation of a framework into which development shall fit". He continues: "Admittedly the boundary between the two is not sharp; very large development projects may be indistinguishable from very detailed planning. However, except at this frontier the distinction is clear". With the move from a static plan into a dynamic planning process, the stage of implementation became much more important.

Alexander [2] describes planning as the development of optimal strategy of future action which is "attended by power and intention to commit resources to act as necessary to implement the chosen strategy". The potential ability and the intention to carry out the plan is sufficient to make the process worthy the name of planning. On the other hand, Wildavsky [3] considers planning as "the ability to control the future by current acts". For Wildavsky, "the object and its fulfillment are part of the same series of actions". Therefore without producing results, planning is but a failure.

The meaning and use of the term "implementation" in the context of town and country planning varies from one writer to another. Detailed planning can be regarded as the implementation of a general policy and strategy; planning permission can be said to be the administrative process of implementation of planning principles; law enforcement is the legal tool to aid implementation of planning and administrative processes, and the actual building and use of land is obviously the substantiation of planning in the environment.

Focusing on planning implementation, this chapter sums up the interdependency of the three facets of statutory planning, analysed above: the machinery, process and content, and actual implementation in the given social orders.

The term "planning implementation" is used here in a broad sense to include all that made the statutory planning systems a practical influential factor on human behaviour and thereby a tool of social control.

A. RESTRICTIVE IMPLEMENTATION

The colonial order prevailing during the Mandatory era dominated the establishment of the planning machinery and the exercise of the planning process. It influenced the purpose served by the plans and decisions and led to the excessive concentration on development control and law enforcement. As a result the Mandatory planning implementation can be called restrictive implementation.

The implementation during the Mandatory era was begun with the prompt action of institutionalisation of the planning machinery. The main town planning institutions were established at a very early stage. This action was taken with the political aim of expressing the authority of the new rule in Palestine.

The discretionary power as to the manning of these bodies was used to ensure the dominance of the central government over the planning machinery. This too was aimed at the consolidation of the authority of the Mandatory power in the environmental sphere. However the machinery included representatives of local institutions which could help the government exercise indirect rule through the collaboration of the local population. In such a way the machinery could acquire additional legitimacy in the eyes of the affected public.

With the years the local planning institutions grew in number. The separation between planning institutions of the Arab sector and those of the Jewish sector attempted to minimise the national conflict while at the same time ensuring greater political dependancy of both sectors on the central government.

Coupled with the institutionalisation of the planning machinery was the rapid imposition of development control over the main urban areas. The legal provision which required the local population to acquire planning permission from the authorities reinforced not only the authority of the central government but also the political power of the local institutions. These local bodies were gradually given power to carry out statutory plans and decisions of the central government through the granting or refusing of planning permission. These bodies were also in charge of law enforcement.

The statutory planning process and especially the plan making process were considered in retrospect rigid, lacking the flexibility required for a dynamic development system. The idea that a plan should provide an explicit picture of the future of the physical environment can be regarded as inconsistent with the mechanism of social-spatial interaction. In practice, however, the plan making process, in the sense of comprehensive outline schemes, was rarely implemented. The socio-political circumstances prevailing in Mandatory Palestine persuaded the authorities to avoid explicit policies and plans and instead to preserve their wide discretion in making ad hoc decisions. Since the political future was uncertain, a

status quo between the rival communities was the prime governmental policy. The actual meaning of that status quo in land use decisions was vague enough to allow restricted growth and controlled development of the Jewish sector, while preserving the Arab majority in most parts of the country.

The central government showed only limited interest in physical planning for the sake of a higher quality of the environment. Low density urban areas, zoning, conservation of valueable sites and buildings, national roads and railway networks, recreation areas and other modern planning principles were introduced where and when there was either governmental interest or particular local demand. For the most part the internal arrangement of land use at the local planning level was in the hands of the local institutions which, in the circumstances, were often used for political and economic gain.

Following the Mandatory planning machinery, process and content described above, is that restrictive implementation has been the prime task of statutory planning. This mainly involved the guidance of existing market forces through development control and imposition of law and order through law enforcement. The administrative stage of licencing and the use of legal proceedings were regarded as the major statutory tools of the planning authorities whereby they could achieve regulative implementation.

Implementation of this kind resulted from a passive attitude on the part of the government towards environmental problems and corresponded to liberal principles of limited government involvement

in the private market. The basic assumption underlying this approach at the time in Britain was that not only were there existing development market forces capable of carrying out any required physical improvements, but that these forces, if only guided and controlled, could perform this task better than any government institution.

Though it is doubtful that this assumption prevailed in the Mandatory government of Palestine, nonetheless the attraction of the regulative planning method to the Mandatory authorities stemmed from British colonial policy of limited economic investment in the colonies and mandated territories. Furthermore, the colonial perception of law and order accorded well with restrictive implementation. The government's authority, which depended to a large degree on the imposition of law and order, was also measured by the replacement of unplanned, chaotic development with governmental control over land use. Emphasis was therefore placed on licencing and law enforcement rather than on positive effectuation as a government tool in the task of environmental reform.

B. REGULATIVE IMPLEMENTATION

Restrictive implementation as provided by the Mandatory government, was not an inescapable consequence of the regulative planning system but rather the motive for shaping the statutory system of Palestine as a regulative one. The nature and character of planning implementation was determined to a large extent by the legislative process which shaped planning law itself. The ideologies and perceptions held by those responsible for the formulation of Planning Ordinances and Laws involved not simply the nature of the planning system, but the method by which the system should be implemented. On the other hand, the different points of view as to planning implementation were expressed even more strongly at the stage of carrying out of planning law, often notwithstanding the explicit provisions of the law.

Since the point was that statutory planning was not a process by which the executive intended to lay down plans and proceed onwards to their positive implementation, but merely a method of controlling the development activities of the local population. The system fulfilled its political role even without bringing significant improvement to the physical environment. For the same reason there is little relevance in the fact that there were no comprehensive plans but many ad hoc decisions, often inconsistent with each other.

As a result of the Mandatory perception, the scope of development control during the Mandatory era was much broader than

that of the British counterpart system. The duty imposed on any building operation of first obtaining a permit from the planning authorities, the wide scope of control which included not only matters of some public interest but also trivial land use matters, and the rule that the carrying out of development without planning permission was a criminal offence, were all expressions of the Mandatory order in Palestine.

In the first stage of the Mandatory system the pace of development carried out by the local population was such that effective control could, and in fact was, exercised by the government. This was largely due to the fact that the political situation allowed the collaboration of the local institutions in ensuring obedience to the law. However the increase in the country's population and the extensive development achieved during this stage required the central government to leave much of the burden of development control to the local institutions. During this second stage the political conflicts grew between the two major sectors and between these and the central government. This significantly reduced the effectiveness of the control process by the central government. The decrease in the status of the government and growing questions as to its legitimacy led to a parallel increase in the power of the local institutions. However, the local authorities adopted a selective mode of law enforcement in accordance with factional interests and irrelevant considerations. This obviously undermined the legitimacy of the entire planning process.

With the establishment of the State of Israel, a new order based on the Jewish democratic nature of the state began to develop. This order, which was influenced by the order prevailing within the Jewish community before 1948, was expressed in the new method of implementation of the inherited regulative planning system. It led to prompt institutionalisation of representative planning bodies whose political role was to ensure the authority of the newly established government. The composition of these bodies reflected the heterogeneity of political groups which characterises Israel. Though this composition was influenced by the prevailing ideologies of representative democracy, the planning process was in practice open to non-official involvement of influential political and social institutions. This was not formalised as a public participation process, but rather created on a selective basis in accordance with political and economic interests. In view of the growth in the country's population, the content of planning decisions and plans became more positive towards physical development than during the previous rule. The restrictive approach and status-quo policy of the Mandatory era were repealed since they were inconsistent with the nature of the new Jewish State.

Nonetheless, the tendency to avoid long-term planning but rather progress through ad hoc decisions continued under the new system. This has been explained as necessary due to the highly dynamic pace of development and the flexibility required in the circumstances. However, the main reason was probably the pre-State legacy of anti-planning and pro-improvisation.

In the spirit of nationalism and representative democracy, the central government took charge of the main positive implementation projects. Its executive bodies planned and carried out the establishment of new towns and villages in what may be considered a far-reaching social engineering project. The central government was also active in building new neighbourhoods in existing urban areas. This gave wide political and economic powers to the governmental executive bodies. At the same time it limited the power and authority of the statutory planning bodies which were left with the task of merely controlling private sector development. Development control in this limited form remained the main tool of implementation of the planning machinery.

The statutory planning powers were subject to political struggles between the central government (actually the political party with which the Ministry of the Interior was invested) and the local authorities. Both saw in these powers an important source of influence. Some compromise was achieved by an institutional integration of the central and local government in the introduction of a broader composition of district planning commissions. However, the implementation of the planning process reflected the race of these bodies for political and economic influence. During the first stage outline or comprehensive plans for an entire city or town were rarely prepared. Instead, detailed plans which were narrow in scope were submitted by either the local authority or private developers. The absence of an explicit outline plan and comprehensive planning outlook helped the planning institutions retain wide discretion and enabled them to use their power of approval in accordance with

different political and economic interests. Further, the nature of the statutory land use plan helped control the powers of the local authorities by imposing on them detailed and rigid provisions which left very little discretion in the stage of granting permits. The local authorities on their part attempted to retain the maximum planning freedom for themselves. They thus manipulated not only their development control powers, but also their law enforcement duties in order to advance political and economic interests.

The seemingly democratic power struggle through statutory planning often exceeded the legitimate boundaries in a democratic system. Factionalism and favouritism dominated this process, particularly at the local level. This exercise of regulative planning implementation, characteristic of the formative years of Israel, encountered heavy criticism from the State Comptroller and the High Court of Justice. The situation in regard to planning law enforcement was such that not only were criminal proceedings initiated on a selective basis, but even court orders of demolition of unauthorised constructions were given according to various alien considerations. This obviously undermined the authority of the Judiciary and the Executive alike.

C. TOWARDS POSITIVE IMPLEMENTATION

The years of the second stage were marked by a somewhat different socio-economic order in Israel which can be traced largely to the maturation of society, the successful absorption of immigrants, and the growing role played in the country's public life by a generation born in the country. It is characterised by greater social stability through a more acceptable balance between Jews from the West and East, between the public good and individual interest, between representative and participatory democracy, between urbanism and ruralism, and between other traditional sources of social conflict. It is asserted that the more balanced emphasis on positive and regulative planning implementation, reflected in the contemporary planning system, derives from the mutual relations between the system and the prevailing stable social order.

The reformed Israeli planning system which was implemented during the second stage (1965-1980's) expressed a desire for greater positive implementation within the statutory framework. This was manifested in the planning machinery, process and content.

The new structure of national, regional and local planning machinery incorporated many representatives of executive bodies. The local authorities, which became far more active in physical planning, consolidated their status in the planning machinery. Public bodies concerned with environmental issues also became involved in the new machinery. This broader composition of the planning institutions led

to greater interest in positive implementation and less concern with the regulation of market forces.

The planning process was also broadened: The new national and regional plans provided not only guidelines for local planning but also served the government-public sector in coordinating country-wide development projects. This sector still carried the main burden of Israel's physical development; hence the practical importance of the reformed planning process. The fact that the activities of the government were brought under the roof of statutory development control led also to the change in orientation from regulative to positive implementation.

However, the importance of this new tendency should not be exaggerated. The planning institutions remained distinct from the executive bodies, despite the involvement of the latter in the process taking place in the former. Since the political power struggle within the central government and the public sector still relied on administrative authority and the practical resources allotted to each body, coordination of positive implementation often failed due to narrow political interests.

From another perspective, a marked tendency towards planning bargaining between local authorities and private developers surfaced during the second stage. The budgetary limitations of the local authorities during times of growing public expectation for physical improvements in urban environments encouraged the use of planning bargaining. On the other hand, there was also a growing public

involvement in the planning process: The public often objected to the long-term cost when the short-term benefit was considered out of proportion [4].

The new generation of multi-level statutory schemes expressed, to some extent, a more comprehensive environmental outlook. The national scheme for dispersion of population included guidelines for implementation, such as economic incentives and tax relief for residents in outlying districts, and suggested greater government investment in sources of employment and educational facilities. The social, economic and physical factors in the urban and rural environments were recognised far more clearly during this stage than at any previous time.

Nonetheless, the inherited regulative implementation nature of the system was still of greater importance than positive implementation. Development control and law enforcement were not only used to control the development initiatives of the private sector, but also of the public sector. These powers were manipulated in the bargaining process which took place with both sectors. The tighter supervision of law courts, the State Comptroller, and the general public over the administrative modes of operation did change to some extent the bureaucratic behaviour, leading to more systematic action against unauthorised building. Unfortunately it also led to greater sophistication in the manipulation of legal powers and factionalism and favouritism still took place under the new system. However, with

growing public concern in environmental issues and the social-spatial relationship, regulative and positive implementation were often subject to profound and fruitful debates.

The main conclusion of this analysis, which should be stressed at this point, is that the statutory planning systems which have a major political role as a tool for effective government, economic role in the provision of efficient utilisation of scarce resources, and social role in the advancement of human welfare and progress, were moulded to fit the prevailing power structures. They were largely disarmed as effective mechanisms of social change but became rather tools in the reinforcement of the existing social order.

NOTES

Introduction

1. W. Friedman, Law in a Changing Society, 2nd ed. (1972) p.42.
2. Lord Lloyd, Introduction to Jurisprudence, 4th ed. (1979).
3. For the meaning of the term see: P. McAuslan, Review of Socio-Legal Research on Planning, Housing and the Environment; See also: C.M. Campbell & P. Wiles, The Study of Law in Society in Britain, 10 Law and Society Review (1976), pp. 547, 555. Campbell and Wiles made a distinction between "Socio-legal studies" and "Sociology of Law". However, this study includes aspects which they attribute to both.
4. It is surprising for a dynamic country with rapid pace of regional and rural development and change such as Israel that so little has been written about its statutory planning system. The most quoted work is that of M.D. Gouldman, Legal Aspects of Town Planning in Israel, (Jerusalem, 1966). Gouldman, the then legal advisor to the Ministry of the Interior, stressed in his introduction that "this is not a textbook on, or introduction to, planning law in Israel - even though, so far as the author is aware, no such book exists either in English or Hebrew. Rather is it a discussion of certain problems which have arisen in Israel together with the way in which the 1965 Israeli planning legislation has attempted to solve them".

No other comprehensive study has been made since. However, a few works on specific elements of the system have been published, mainly during the last few years. See, for example: E.R. Alexander, R. Alterman, H. Law-Yone, Urban Plan Implementation: Evaluation of the Israeli Statutory Planning System, (Haifa 1979).

5. Legal periodicals in Israel contain only a handful of articles on statutory planning issues. Among them are R. Alterman, The Planning and Building Law and the Local Plan: A Rigid Regulation or a Flexible Framework?, 11 Mishpatim (May 1981), pp. 197-220 (Hebrew); R. Laster, D. Reading: Planning and Building or Building and Planning?, 8 Israel Law Review (1973), pp. 481-505; N. Elster, Article 197 of the Planning and Building Law 5725-1965, 36 Hapraklit Part III (1985) pp. 516-537.
6. See, for example: A. Berler, New Towns in Israel, (Jerusalem 1970); E. Cohen, Development Towns: The Social Dynamics of "Planted" Urban Communities in Israel, in S.N. Eisenstadt (ed.) Integration and Development in Israel, (New York 1970); E.A. Altman & B.R. Rosenbaum, Principles of Planning and Zionist Ideology: The Israeli Development Plan, 37 Journal of the American Institute of Planners, IV (Sep. 1973) pp. 316-325;

- the American Institute of Planners, IV (Sep. 1973) pp. 316-325; M. Hill, Planning in Turbulence: Urban and Regional Planning in Israel 1948-1977, (Haifa 1977).
7. T. Bottomore, Sociology: A Guide to Problems and Literature, (2nd ed.) (London 1971); P. Sites, Control: The Basis of Social Order, (New York 1973).
 8. J. Roucek, The Concept of Social Control, in J. Roucek (ed.) Social Control for the 1980's, (Connecticut 1978) pp. 3-19.
 9. Ibid.
 10. E.A. Ross, Social Control: A Survey of the Foundations of Order, (1969) (first published in 1901, New York); See also: Ross' contemporaries, W.G. Sumner, Folkways, (1906), C.H. Cooley, Human Nature and Legal Order, (1902), and A. Small, Origins of Sociology, (1924). The latter formed the "Social Control" school in American sociology. The concept however appeared also in earlier writings; e.g. E. Durkheim, The Division of Labor in Society (1984).
 11. F. Tonnies, Gemeinschaft und Gesellschaft, (1978).
 12. M. Janovitz, The Intellectual History of 'Social Control', in J. Roucek (ed.) op. cit. pp. 20-45.
 13. Roucek, op. cit.
 14. R. Pound, Social Control Through Law, (1942).
 15. T. Parsons, The Social System, (1951).
 16. K. Mannheim, Man and Society in an Age of Reconstruction, (translated from German) (1940).
 17. K. Mannheim, Freedom, Power and Democratic Planning, (1951): see also K. Mannheim, Diagnosis of Our Time (1943).
 18. Mannheim, op. cit.
 19. See: H. Gerth & K. Brawnstedt, Introduction to Mannheim, Freedom etc., op. cit.
 20. F. Hayek, The Constitution of Liberty, (1960).
 21. K. Popper, The Open Society and its Enemies, (5th ed.) ed. ver. (London 1966).

PART I

Chapter 1

1. The geographical and political boundaries of Palestine have been variously defined and are a matter of dispute. For the purpose of this study, the term "Palestine" will be limited to the area which came under the British Mandate, excluding Trans-Jordan. However, the emphasis will be on the territory which is now included in the State of Israel. Further, the term will be used with reference to the period from the end of Turkish rule until the establishment of the State of Israel.
2. For geographical data of Palestine, see: R. Nathan, O. Gass, D. Creamer, Palestine: Problem and Promise. (Washington D.C. 1946) pp. 101-102. For the geographical aspects in relation to planning see also: E. Orni, E. Efrat, The Geography of Israel, (2nd ed.) (Jerusalem 1966); E. Brutzkus, Physical Planning in Israel, (Jerusalem 1964); A. Sharon Physical Planning in Israel, (Tel-Aviv 1952).
3. E. Brutzkus Regional Policy in Israel, (Jerusalem 1970) p.3.
4. See: P.E. Schoenberg, Palestine in the Year 1914, Ph.D thesis, (New York University 1978), Vol. 1 (unpublished).
5. Orni & Efrat op. cit. p. 168, 244; D. Stanislavski, The Origin and Spread of the Grid Pattern Town, Geographical Review, 36, 1946, pp. 105-120; For the particular German's planning in Jerusalem see McLean's City of Jerusalem - Town Planning Scheme, (1918) (unpublished); S. Waterman, Pre-Israeli Planning in Palestine. The Example of Acre, Town Planning Review, (January 1971), p.85; M. Gilbert, Jerusalem, Illustrated History Atlas, (1977). Schoenberg, op. cit. pp. 6-21.
6. An Interim Report on the Civil Administration of Palestine during the period 1st July 1920 - 30th June 1921, [prepared by Sir H. Samual] H.M.S.O. 1921 (Cmd. 1499) (Thereafter "Interim Report").
7. Interim Report, op. cit. p. 1; Palestine Royal Commission Report ("Peel Report" thereafter) 1937, HMSE 1937 (Cmd 5479). B. Wasserstein, The British in Palestine 1917-1924, (London 1978).
8. As there was no official census until 1922, various sources give different numbers. See: Interim Report op. cit.; Schoenberg op. cit. p. 142; R. Bachi, The Population of Israel, (Jerusalem 1974).
9. Interim Report op. cit.; It should be stressed that this division on a religious basis is not congruent with ethnic groups. Arabs are, for example, Christians as well as Moslems.

10. Schoenberg op. cit. p.II.
11. S.E. Eisenstadt, Israeli Society, (Jerusalem 1967).
12. Wasserstein op. cit. p.5; Schoenberg op. cit. p. 355.
13. The Balfour Declaration was a statement of British policy issued on 2 November 1917 by Mr. (after Lord) Balfour, the then Foreign Secretary. Its opening words were "His Majesty's Government view with favour the establishment in Palestine of a National Home for the Jewish People and will use their best endeavours to facilitate the achievement of this object ..."
14. This was an ambiguous pledge given on 24 October 1915 on behalf of the British Government to Hussein the Sherif of Mecca by Sir Henry McMahon, the then High Commissioner in Egypt. This was issued in the framework of negotiations with the Sherif of Mecca regarding independence for the Arabs following the Sherif's refusal to support the Turkish Sultan-Caliph's declaration of a Jihad against the Allies. Preceding the actual wording of the pledge, McMahon excluded certain territory from the claim of the Sherif to independence. The pledge stated: "Subject to the above modifications, Great Britain is prepared to recognize and support the independence of the Arabs within the territories ... proposed by the Sherif of Mecca." See: Wasserstein, op. cit.
15. In most cases Britain was not trusted by either side, see: Norman & Helen Bentwich, Mandate Memories 1918-1945, London 1965; See: Report of the Commission of Inquiry into the Disturbances in May 1921. HMSO 1921 (Cmd 1540); Interim Report op. cit.; Peel Report op. cit.; Wasserstein op. cit.
16. For British interests in Palestine, see: The Royal Institute of International Affairs, Great Britain and Palestine 1915-1945, Information Papers No. 20 (3rd ed.) (London 1946); Al Tbawi, British Interests in Palestine 1800-1901, (London 1961), pp. 183-205; Y. Ben Arie, The Rediscovery of the Holy Land in the Nineteenth Century, (Jerusalem 1979), pp. 195-198; Penner Brockway, The Colonial Revolution, (London 1973), pp. 156-161.
17. B.W. Tuchman, Bible and Sword, (N.Y. 1956) (Republished G.B., 1982).
18. Schoenberg, op. cit. pp. 172-187; G.E. Franklin, Palestine. (New York, 1911); H. Luke and E. Keith-Roach, The Handbook of Palestine and Trans-Jordan (3rd ed.) (London 1933) p. 56.
19. For Turkish administrative structure see: E. Samuel, The Ottoman Legacy to Israel, Jewish Journal of Sociology, 2 (1960) pp. 219-235; Peel Report op. cit. pp. 150-153 and map No. 1 of the administrative districts p. 18; Schoenberg op. cit. pp. 468-516; The Vilayet Law of 13 March 1913.
20. G. Young, Corps de droit Ottoman, (7 vols.) 1905-1906, Oxford University Press, Vol. 1, pp. 66 ff(1294).

21. I. Ben Zvi, Local Autonomy in Palestine, in the Annals of the American Academy of Political and Social Science; T. Sellin and D. Young (eds.), Palestine: A Decade of Development, Vol. 16 (Philadelphia 1932), pp. 27-33.
22. For the Turkish system of land rights and distribution of land ownership see: J. Weitz, Struggle for the Land (1950); A. Granott, Land System in Palestine: History and Structure, (London 1950); F. Goadby and M. Doukhan, The Land Law of Palestine, (Tel-Aviv 1935); A. Ben Shemesh, Land Laws in the State of Israel, (Tel-Aviv 1953) (Hebrew).
23. This code was first published in 1858 and was amended by numerous Turkish laws, especially after the Turkish revolution in 1910. See: Goadby and Doukhan, The Land Law of Palestine, (Tel-Aviv 1935); Goadby, Palestine Law, Sources and Judicial Organisation, reprint from Opera Academia Universalis Jurisprudentinse Comparativa/Berlin, (1920's).
24. The Tapu Law, A.H. 1275 (1858) and other laws. See: Goadby & Donkam, op. cit. Chap. XVIII.
25. It has been repealed by the Israeli Land Law 5729 - 1969. 23 Laws of the State of Israel (thereafter cited L.S.I.) (1968-69), p. 283.
26. See: Law of the Administration of the Vilayet 1871, G. Young, op. cit. Vol. I. p.59; Law of the Construction and Alignment of Streets of 1891, Young, op. cit. p.137.
27. See: Regulations for Expropriation for Public Purposes A.H. 1926, and the particular law dealing with expropriation by the Municipalities of A.H. 1332; Goadby & Donkam, op. cit. Chap. XIV.
28. W.H. McLean, Regional and Town Planning in Principle and Practice, (London 1930), p. 120; McLean, a British town planner who worked in Jerusalem in 1918, made that comment on the way the Turks exercised development control in Jerusalem. However, a better example of controlling building activity was Haifa in 1909-1910, see: A. Carmel, The History of Haifa under Turkish Rule, 2nd ed. pp. 161-169.
29. For Zionist activities and development of land see: Leah Dukhan-Landau, The Zionist Companies for Land Purchase in Palestine 1897-1914, (Jerusalem 1979) (Hebrew); A. Ruppin, The Agricultural Colonisation of the Zionist Organisation in Palestine, (London 1926); Schoenberg, op. cit. pp. 269-363.
30. Israel Pocket Library, Immigration and Settlement, Keter Books, (Jerusalem 1973); N. Bentwich, Fulfilment in the Promised Land 1917-1937, (London 1938); Among these were Jewish neighbourhoods outside the Walls of the Old City of Jerusalem which were founded in the nineteenth century, e.g. Yemin Moshe, Nahalat Shivah, Meah Shearim; Tel-Aviv, a garden

suburb of Jaffa was established in 1905; Hadar Hacarmel a suburb of Haifa was established in 1881. Schoenberg, op. cit. vol.II, p. 364; A. Ruppin, Memoirs, Diaries, Letters (A. Bein ed.) (London 1971), p. 149.

30. For example: The engineer Joseph Levi of the Technical Department of the Zionist Organisation's Office in Palestine, who made the subdivision of plots of land in Tel-Aviv in 1913; The architect Buerwald made the plan for the rural settlement of Merhavia in 1912.
31. A. Sharon, Collective Settlement in Israel, The Town Planning Review vol. XXV, 1954-5, p. 255; A. Ruppin, Agricultural Settlement in Palestine by the Zionist Organisation, 1908-1923, (Tel-Aviv 1975), pp. 52-54.
32. Israel Pocket Library, History from 1880, Keter Books, (Jerusalem 1973).
33. A. Arian, Ideological Change in Israel, (1968).
34. See: S. Reichman, From Foothold to Settled Territory 1918-1948, (Jerusalem 1978) (Hebrew).
44. Schoenberg, op. cit. p. 355.

Chapter 2

1. The town had surrendered on December 9 1917. The official entry was, however, two days afterwards. See Lt. Colonel H. Piric-Gordon, Record of the Advance of the Egyptian Expeditionary Force; Captain Cyrill Falls, Military Operations Egypt & Palestine, 2 Parts, (London 1930); M. Gilbert, Jerusalem - Illustrated History Atlas, (1972) p. 63.
2. Peel Report, op. cit. pp. 153-158.
3. Ibid.
4. A tendency to reduce their number through amalgamation made them 10 in 1919, 7 in 1920, and 3 in 1927. See H.C. Luke & E. Keith-Roach, op. cit.
5. Ibid: Interim Report op. cit.
6. An example of this gap was the separate legislation for the construction of roads and railways from other planning matters. This followed the line of English legislation.
7. Peel Report op. cit.: R. Storrs, The Memories of Sir Ronald Storrs. (New York 1937) (Reprint 1972). The writer was an exception. He was an officer who also had some experience in administrative work; Wasserstein op. cit.

8. Among these: W.H. McLean, C.R. Ashbee and P. Geddes, and in latter years P. Abercrombie, Holliday and H. Kendall.
9. Allenby to the War Office, Oct. 1918, Public Record Office, Foreign Office 371/3384/1358 as quoted in Wasserstein op. cit. p. 20. Wavell: Allenby, Soldier and Statesman, (London 1946) p. 261.
10. Wasserstein, op. cit. p. 21.
11. N. Bentwich, Fulfilment. op. cit. p. 122. Wasserstein op. cit. pp. 34-57.
12. N. Bentwich, Legislation of Palestine 1918-1925, Vol. I. (1926). The proclamation prohibiting land transactions in the Ottoman Sunjak of Jerusalem was made by the Chief Administrator Major-General Money on November 1, 1918 (p. 613) and another one for the rest of the Occupied Territory was made on Nov. 16, 1918 (p. 617). These proclamations included the official explanation that as the registers of land had been removed by the Turks, it was impossible to allow further transactions. See: Peel Report op. cit,
13. For example, the railway line which was laid from the Suez Canal to Haifa long the army advance. See: N. Bentwich, Fulfilment, op. cit. p. 9.; M. Gilbert op. cit. p. 65.
14. Storrs op. cit. p. 323; G. Biger, The Contribution of the British Administration to the Development of Jerusalem During the First Period of its Rule. Mahkarim Begeographia Shel Eretz Israel 5736 pp. 175-200, 179, (Hebrew).
15. Town planning in Palestine was introduced at an earlier stage than in most Africa Colonies and India, see: comment in T.A. Concannon Review of Jerusalem - the City Plan, 34 Journal of the Town Planning Institute, 1948, p. 171: planning in Egypt and the Sudan was however more comprehensive and included regional and national planning; See: W.H. McLean, Regional and Town Planning In Principle and Practice, (London 1930).
16. For the full text of this proclamation see: Legislation of Palestine op. cit. p. 599; Falls op. cit. pp. 260-261; Wavell, op. cit. p. 193.
17. N. & H. Bentwich op. cit. p. 31; Wasserstein op. cit. p. 20.
18. An indication of this can be found in his agreement with the enemy - the Turks - to silence the guns on the approach to Jerusalem in order to save the city from destruction. He also showed personal interest in the city plan and his support of the Pro Jerusalem Society (see below).
19. As N. Bentwich wrote (Fulfilment op. cit. p. 64): "Jerusalem was fortunate in its first British Governor after the Occupation, Sir Ronald Storrs, an artist administrator who, having a deep

regard for the beauty and history of the city ..." For a personal account of his activities in Jerusalem see: Storrs op. cit.

20. McLean, op. cit. pp. 63-65; H. Kendall, Jerusalem: The City Plan, Preservation and Development During the British Mandate 1918-1948, H.M.S.O. (London 1948) p. 4.
21. Public Notice No. 34 of April 8 1918, see: Storrs op. cit. p. 327. McLean op. cit.: Kendall op. cit.: Gilbertop. cit. S. Shapiro, Planning Jerusalem: The First Generation (1918-1968), in Urban Geography of Jerusalem - a companion volume to the Atlas of Jerusalem 1973. For the legal significance of the term "Public Notice" see: Bentwich, Legislation of Palestine op. cit. p. III.
22. Storrs (op. cit.) explained this as "respecting the tradition of stone vaulting the heritage in Jerusalem of an immemorial and a hallow past"; Gilbert, op. cit.
23. W.H. McLean, City of Jerusalem, Town Planning Scheme, (1918); Kendal op. cit.; McLean Regional op. cit.
24. Sapiro, op. cit.
25. Storrs op. cit. p. 328.
26. McLean's Scheme op. cit.; McLean's book op. cit.
27. Storrs op. cit. p. 334.
28. Ibid.
29. Ibid.
30. Storrs op. cit. p. 327.
31. Storrs' preface to C.R. Ashbee (ed.) Jerusalem 1918-1920. The Records of the Pro Jerusalem Society, p. VII; for the contribution of the Society, see Appendix I p. 71; Storrs op. cit. p. 328.
32. Storrs op. cit. p. 327. The Society ceased to operate when Storrs finished his term of office in 1925 (see Storrs, op. cit.).
33. Storrs op. cit. p. 328; Storr's preface to C.R. Ashbee ed. Jerusalem 1920-1922 p. VI; Ashbee, A Palestine Notebook, op. cit. p. 139.
34. C.R. Ashbee, Where the Great City Stands: A Study in the New Civics, (Essex House Press 1917); G.E. Cherry, The Evolution of British Town Planning, (Leonard Hill Books 1974), p. 53.

35. See: the criticism of J.M. Neufeld, Planning in Palestine, Journal of the American Institute of Planner, Vol. XV, 1949, p. 27.
36. C.R. Ashbee, A Palestine Notebook, 1918-1923, (New York 1923) p. 20; C.R. Ashbee (ed.) Jerusalem 1918-1920. The Records of the Pro Jerusalem Society, (London 1921) (thereafter Jerusalem 1918-1920).
37. H.Z. Hirschberg, A Turning Point in the History of Jerusalem in the Nineteenth Century, in H.Z. Hirschberg (ed.), Yossef Y. Rivlin, Memorial Volume, (Ramat Gan 1964), pp. 78-107, (Hebrew).
38. For account of this aspect see: Ashbee op. cit.
39. Other legal measures which were introduced by the Military Administration followed the same line. Under these Antiquities throughout Palestine and certain trees such as olives, oaks and carobs, were conserved. See: The Antiquities proclamation of December 1, 1918, Proclamations, Ordinance and Notices issued by OETA (South) Cairo 1920, p. 4; and for the preservation of trees see: Public Notices No. 37 op. cit. p. 1 and No. 59 op. cit. p. 4.
40. For the treatment of town planning as a predominately architectural function see: W. Ashworth, The Genesis of British Town Planning, (London 1954) pp. 193-194.
41. Storrs op. cit. p. 327; Ashbee, Jerusalem 1918-1920 op. cit. p. V.
42. An unusual example of this was the Public Notice No. 82 (op. cit. p. 3) in which the authorities encouraged local bodies to reafforest the hill tracts by means of exemption from taxes. The main interest of the military authorities was not the reafforestation of the country per se, but rather their use of the wood.
43. Geddes, Jerusalem Actual and Possible.
44. Ashworth op. cit. p. 175; Cherry op. cit pp.49, 52.
45. Geddes, Cities in Evolution, (London 1915).
46. Geddes was initially invited by the Zionist Organisation to prepare a plan for the Hebrew University of Jerusalem. While there he was also invited to prepare the plans for Jerusalem and Haifa.
47. Cherry op. cit. p. 52.
48. Boardman, The Worlds of Patrick Geddes, (London 1978), p. 314.

49. P. Geddes, Civics as Applied Sociologically, Sociological Papers 1905 McMillan.
50. Boardman op. cit.; Kendall op. cit.; Sapiro op. cit.
51. Jerusalem 1918-1920 op. cit. p. 13.
52. Wasserstein op. cit.
53. See: S. Reichman op. cit. p. 148.
54. J. Tishler, The Settlement of the Land of Israel, (Tel Aviv reprint 1947) (Hebrew).
55. E. Howard, Garden Cities of Tomorrow, (London, reprint 1965).
56. Reichman op. cit.

Chapter 3

1. C.L. Upthgrove, Empire by Mandate, (New York 1954); F.M. Goadby, Palestinian Law, Sources and Judicial Organisation, op. cit.
2. N. Bentwich, The Mandates System, (London 1930).
3. For the text of the Mandate see: N. Bentwich op. cit. Appendix B p. 137.
4. Peel Report op. cit. p. 158.
5. In this respect, the position in Palestine different from that of other Mandatory territories such as Syria and Iraq where the national governments were not headed by High Commissioners. See: C. Antonius, The Machinery of Government in Palestine, in T. Sellin and D. Young (eds.), Palestine: A Decade of Development, The Annals of the American Academy of Political and Social Science, Philadelphia Vol. 164 1932, p. 55.
6. N. Bentwich, England in Palestine, (London 1932), p. 43.
7. N. Bentwich, England in Palestine, op. cit.; Luke & Keith Roach op. cit. pp. 34-36; Peel Report op. cit. p. 158.
8. See comment in Kendall, op. cit. p. 106.
9. Luke & Keith Roach op. cit.
10. Wasserstein, op. cit.; Interim Report, op. cit.
11. Wasserstein, op. cit.
12. Interim Report, op. cit.

13. Immediately after the occupation, the personnel of the Municipalities were appointed administratively by the Government. The first elections did not take place until 1927 (under the Municipal Election Ordinance 1926). Thereafter they were postponed for a number of years. The elections held in 22 towns were in accordance with the rules which dated back to the Ottoman period and thus only a limited class of citizens had the right to vote. See: Ben Zvi op. cit.
14. See: Ben Zvi op. cit. and Umar Bey-Salih Al Barghuth, Local Self Government - Past and Present. The Annals of the American Academy of Political and Social Science, Vol. 164 (Philadelphia 1932), pp. 34-38.
15. Bentwich, Legislation of Palestine, op. cit.; Bentwich, England in Palestine, (London 1932) Appendix B, pp. 18-35; Goadby, op. cit.
16. On the fall of the constitutional institutions see: Wasserstein, op. cit. pp. 108-138.
17. H. Samuel, Memoirs, (London 1945) p. 161.
18. On this a senior official in the Government of Palestine Albert Hyamson commented: "With Sir Herbert Samuel as High Commissioner and Colonel (later Sir) Ronald Storrs as Acting Civil Secretary, such a step was by no means surprising". A. Haymson, Palestine Under the Mandate 1920-1948, (London 1950 Reprint), Connecticut, Greenwood Press, Publishers 1976, p. 187.
19. Bentwich, Laws of Palestine, op. cit. Vol. I. p. 60.
20. Ibid, p. 76.
21. Official Gazette of the Government of Palestine 1921 No. 36, February 1, 1921, p.1.
22. For a relevant definition and discussion of the term "official class" see: J.M. Lee, Colonial Development and Good Government, (Oxford 1967).
23. Ashbee (ed.) Jerusalem 1920-1922 op. cit.; Report on Palestine Administration 7/1920 12/1921 op. cit. p. 49.
24. Samuel, Memoirs, op. cit. note in p. 164.
25. Ibid.
26. As Ashbee wrote: "The year that followed July 1920 was one of great hope and promise to all of us. My own work was largely to help shape into the framework of the new laws what had in my own particular department already been fashioned in the rough". A Palestine Notebook, op. cit. p. 139. Ashbee (ed.) Jerusalem 1920-1922, op. cit. p. 2.

27. Ashbee, Jerusalem 1920-1922, op. cit.
28. Storrs had been the acting Civil Secretary from 1 July 1920 until the arrival of Wyndham Deeds in September 1920. He then continued as Governor of Jerusalem until 1925. See: Storrs, op. cit.
29. See: Government of Palestine, Minutes of the Advisory Council, op. cit. meetings 2 and 3.
30. Sir Herbert Samuel was not new to town planning. As a member of Asquith's Liberal Government he served as the President of the Local Government Board in 1914-1915. See: H. Samuel, Memoirs, op. cit. pp. 85-86.
31. Minutes of the Advisory Council, op.cit. Meeting 4.

Chapter 4

1. Official Gazette of the Government of Palestine, 1921, No. 36 February 1, 1921, p. 1. This Ordinance was wholly devoted to the subject of town planning. By comparison, such distinction between the subjects of planning and housing was made in England only in 1925 by the Town Planning Act 1925 (15 Geo V, Ch 16).
2. However, to non-lawyers it looked as a "bewilderingly complex piece of Bentwich craft". Ashbee, A Palestine Notebook, op. cit. p. 157.
3. The Ordinance was divided into five parts: 1) Constitution of authorities and powers. 2) Preparation and content of schemes. 3) Acquisition of land. 4) Financial provisions. 5) Miscellaneous provisions.
4. On the use of the English law as a basis for this Ordinance, see a remark in the Government of Palestine, Report on Palestine Administration July 1920 - December 1921. HMSO 1922 p. 49.
5. 9 Edw VII, Ch. 44.
6. 9 & 10 Geo V. Ch. 35.
7. See W. Ashworth, The Genesis of Modern British Town Planning (London 1954); C.E. Cherry, The Evolution of British Town Planning (London 1974); H.R. Alridge, The Case for Town Planning (London 1915).
8. For example, ten years after the enactment of the 1909 Act, only three schemes were submitted for approval, and even the obligation to prepare such schemes made by the 1919 Act (sec. 46) did not alter this situation very much.

9. This involved among other things the need for permission to prepare schemes (which was later repealed), a duty to notify landowners, and in some cases the holding of a public inquiry.
10. See: P. McAuslan, The Ideologies of Planning Law, (1980).
11. On the issue of compensation for compulsory acquisition of land and for planning restrictions, see: H.R. Parker, The History of Compensation and Betterment Since 1900, in P. Hall (ed.) Land Values, p. 53.
12. See: J. Minett, The Housing, Town Planning etc. Act 1909, in The Planner, Journal of the Royal Town Planning Institute (RTPI), Vol. 60, 1974, pp. 676-680.
13. Ibid.
- 13A. The fact that the law itself prescribed the composition of some institutions was considered of such importance as to lead the Court to declare "null and void" a resolution by a commission which was composed in violation of these provisions. See: C.A. 25/35 Local Town Planning Commission Haifa V Sahyum, Law Report of Palestine (thereafter cited P.L.R.) (1934-35), p. 227.
14. See: Ashworth, op. cit. pp. 167-190; Cherry op. cit. pp. 6-32; Alridge, op. cit. pp. 145-156.
15. Hyamson, op. cit. p. 187.
16. Sir Herbert Samuel in his Interim Report, op. cit. Appendix I, made a remark on the enactment of this ordinance, that it aimed at "ensuring the development of towns on approved lines through the medium of central and local commissions." (my emphasis).
17. The influence of the German system on the English system came mainly through T.C. Horsfall's book, The Example of Germany, (Manchester 1904); See: Ashworth op. cit. p. 177; Cherry op. cit. p. 52; J. Minett op. cit. p. 676.
18. 1909 Act, sec. 55.
19. Under the Ministry of Health Act 1919 (9 & 10 Geo V Ch. 12) all matters of town planning previously held by the local Government Board were the responsibility of the Ministry of Health.
20. See the 1919 Act, sec. 46.
21. Ibid.
22. Ibid.
23. 1921 Ordinance Art. 13(8). (The Mandatory Ordinance was divided into articles whereas the English Acts were divided into sections.)

24. Ibid Art. 12(6).
25. Ibid Part IV.
26. Ibid Part III.
27. Minett, op. cit. p. 676.
28. See below.
29. The High Commissioner filled a place similar to that exercised by a Minister under British planning law.
30. Ibid Art. 1.
31. Ibid Art. 32.
32. Ibid Art. 2.
33. The functions of the fourth tier depended on whether or not the Town Planning Area included a municipality. Infra.
34. Ibid Art. 37.
35. Similar powers were explicitly conferred upon the local Government Board by the 1909 Act sec. 54(4).
36. Ibid Art. 16.
37. Ibid Art. 31.
38. Ibid Art. 33.
39. Ibid Art. 1.
40. Ibid Art. 2. Further, under Art. 3 the precise boundaries of the planning areas were to be designated by the central commission.
41. Ibid Art. 4(1), 6.
42. Ibid Art. 8.
43. Ibid Art. 33.
44. Ibid Art. 37(1).
45. Ibid Art. 37(2).
46. Ibid Art. 8, 18.
47. In England there was no body totally devoted to town planning until the establishment of the Ministry of Town Planning in 1943.
48. Ibid Art. 4.

49. The participation of the local population resulted from the demand of the Jewish members of the Advisory Council (Ben Zvi and Yellin) when the draft of this Ordinance was considered. See: The Government of Palestine, Minutes of the Advisory Council Meetings, 2nd meeting November 9 1920; 3rd meeting December 7 1920 (Public Record Office C0814/6).
50. Ibid; The Pro Jerusalem Society which was also active in the enactment of this provision was the type of body to be included in the local commissions.
51. Ibid Art. 6.
52. Ibid Art. 4(4).
53. See: H.C.J. 81/27 Fitiani V The President of the Municipal Council of Nablus, (1920-33), P.L.R. p. 243; Coadby & Douchan op. cit. However, the wording of the provision created a confusion, see: C.A. 25/35 Local Town Planning Commission Haifa V Sahyun, op. cit. p. 278. For a change in this law, infra.
54. For example of expropriation of land for public purpose, see Art. 8.
55. Ibid Art. 8.
56. Ibid Art. 27, 28, 29, which were based on sec. 58, 59 of the English 1909 Act; infra.
57. Ibid Art. 36(1).
58. These are quotations from the Government of Palestine, Annual Report of the Palestine Administration for the period July 1920 - December 1921 op. cit. There they were used differently to convey the official positive attitude towards local authorities.
59. Ibid Art. 8, 18.
60. Ibid Art. 19, 21.
61. Bentwich, England in Palestine, op. cit. p. 243.
62. Cherry, The Housing, Town Planning Etc. Act 1919, op. cit. p. 684.
63. The 1909 Act sec. 54(5).
64. Subject to the powers of each of the Houses to veto. See: sec. 55(2).
65. As the Supreme Court said in later years [Cr.A. 10/39 Attorney General V Azari, (1939) Vol. 6, P.L.R. p. 180, 185]: "No doubt some of the provisions of the scheme are in the broad meaning of

the word 'regulations'." However, it held that for the purposes of publication the particular provisions of the town planning Ordinance prevailed over the general provisions of the Interpretation Ordinance.

66. The general rule was set in the 1909 Act sec. 54(1). However exceptional circumstances whereby a scheme could cover such areas were dealt with by sec. 54(3); see: Alridge, op. cit. p. 189; Ashworth op. cit. pp. 198-199.
67. The first application of planning to country areas in England was by the 1932 Act.
68. See Minott op. cit. p. 676.
69. The 1919 Act sec. 47.
70. Ibid Art. 10(d)(1).
71. Ibid Art. 12(b).
72. Ibid Art. 10(d).
73. Ibid Art. 10(b).
74. Ibid Art. 10(1). For the power to limit the number of buildings per acre in England see: sec. 59(2); Alridge op. cit. p. 192.
75. Ibid Art. 11.
76. Ibid Art. 10(a) (b) (e) (f) (g) respectively.
77. See: Alridge op. cit. pp. 192-194.
78. Ibid Art. 12(f) (g).
79. Ibid Art. 12(e).
80. Ibid Art. 10(a).
81. See: Town Planning (Plans) Rules, Official Gazette 1927, published on July 16 1927. For a revised version of these Rules see: Laws of Palestine, Drayton (ed.), 1934 Vol. III p. 2246; Central Town Planning Commission Instructions for Town Planning Schemes, Proclamations etc. Annual volume for 1925, p. 371.
82. Ibid Art. 12.
83. See: Town Planning Rules op. cit.
84. See: Central Commission Instructions, op. cit.
85. Ibid Art. 12(b).
86. Ibid Art. 10(d), 12(d).

87. Ibid Art. 10(e)(f)(g).
88. Ibid Art. 12(c).
89. See: Ashworth, op. cit.
90. In England some degree of flexibility in modification of schemes was introduced by the 1932 Act.
91. Ibid.
92. P. McAuslan, op. cit.
93. Ibid sec. 54.
94. Ashworth, op. cit. p. 190.
95. E.G. Cherry, Town Planning in its Social Context, (London 1970), p. 44.
96. An indication of the link between the Town Planning Ordinance and its implementation can be shown by the fact that the official Hebrew translation of this Ordinance entitled it as "Binyan Arim" meaning town building rather than town planning.
97. Ibid Part III: The provisions regarding expropriation of land for planning purposes differed from the Ottoman law of Expropriation which was then in force, because this law was considered to be inadequate.
98. Ibid Art. 8, 18. It was not clear from the Ordinance whether Art. 8 provided additional powers for expropriation of land which was not covered by an approved scheme. However this Article was repealed in 1936 by a subsequent Ordinance.
99. One significant exception to the liability to expropriation was the property of religious bodies. Art 12(d) provided that: "no building or site which is actually in use for a religious purpose or which is regarded with special religious veneration shall be expropriated". This provision limited considerably the planning powers in places such as Jerusalem.
100. See: The Acquisition of Land (Assessment of Compensation) Act 1919, 9 & 10 Geo V [24].
101. Op. cit. Art. 20.
102. Ibid Art. 21.
103. Ibid Art. 25.
104. Ibid Art. 36(2)(a).
105. Ibid Art. 36(3).
106. See: 1909 Act sec. 60(1).

107. Ibid sec. 55(1).
108. See: Ibid Sec. 57(1).
109. See also: Town Planning Rules relating to building permits, Official Gazette 1922.
110. Ibid Art. 35.
111. See below.
112. Ibid Art. 36(1).
113. By comparison the English 1919 Act (sec. 45) introduced an interim development provision but this was to secure the entitlement of the developer to compensation rather than restricting such development.
114. Save any internal repair. Ibid Art. 35.
115. Ibid Art. 37(1). See: H.C. 81/27 Fitiani V The President of the Council of Nablus op. cit.; H.C. Namli V Chairman of Local Town Planning Commission; (1935) 5 C.O.J. p. 1757.
116. Ibid Art. 37(2).
117. Ibid Art. 37(1) (2).
118. Ibid Art. 36(2) (a).
119. Ibid Art. 36(2)(b).
120. Ibid Art. 38. However, the Court held that an order under this Article acted in personam and not in rem. See: H.C. 84/30 Elk V Chairman of the Local Town Planning Commission of Jerusalem, Collection of Judgements [Rotenberg] 1935, Vol. V, p. 1758.
121. Ibid Art. 22.
122. Ibid Art. 14.
123. Ibid Art. 39, 21(3), 36(b), 27(b), 30(3).
124. Ibid Art. 37.
125. The Town Planning Procedure Regulations (England and Wales) 1910, as were revised in 1914. S.R. & O. 1914.
126. Cherry, The Housing Town Planning Etc. Act 1919, op. cit. pp. 681-682. By comparison in Palestine there were only publications and not private notifications. However the religious bodies which own land had some privileges such as to be notified about a deposit of a scheme which affected their

property. See: Art. 13(b). This article was introduced as a result of the local demand; see: Government of Palestine, Minutes of the Advisory Council, op. cit. 3rd meeting December 7 1920.

127. Ashworth, op. cit. p. 190.
128. It should be noted that the planning Ordinance did not repeal the civil law of Palestine, nor did it prevail over it. See: C.A. 79/30 Hagenlocher V El-Hannawe (1935) 5 C.O.J. pp. 1757-1758. There the Court said: "It may well be that a building has been erected in accordance with Town Planning Regulations and yet that windows in that building may overlook the Women's quarters of a neighbouring house, and thus come within the provisions of Article 1202 of the Mejelle". [The Mejelle was the old civil code based primarily on the Koran and custom which was in force in Palestine. See: C.A. Hooper, The Civil Law of Palestine and Trans-Jordan, (Jerusalem 1933), Vol. I, p. 312.
129. Ibid sec. 61 of the 1909 Act.
130. The first meeting of the Central Commission was held on February 3 1921. See: the Official Gazette op. cit.; The Government of Palestine, Town Planning Adviser, Annual Report for the year 1936, (Jerusalem 1937) p. 5 (thereafter TPA - 1936 Report).
131. Dr. Arthur Ruppin who was mentioned above represented the Jewish community.
132. The Attorney General Norman Bentwich served as chairman from 1924 to 1930.
133. See: TPA - 1936 Report, op. cit.
134. See: Colonial Office Reports, Palestine, Report on Palestine Administration 1923 HMSO 1924 Colonial NO. 5 p. 52; N. Bentwich England in Palestine, (London 1932) p. 243.
135. Clifford Holliday was in fact an independent architect and town planner who worked in Haifa. He also worked part-time on planning for the government between 1922-1936.
136. These were declared during the first year, 1921.
137. For the list of these areas see: TPA - 1936 Report, op. cit.; The Laws of Palestine, Drayton 1934 Vol. 3 p. 2242.
138. See: the explanatory note by the Attorney General of October 17 1928 in the draft Town Planning (Amendment) Ordinance 1928 (Public Record Office, CO 162/3).
139. The term "bye-law" was intended to be used for matters of substance while "rule" was for procedural planning matters. However, this distinction was not always kept.

The most important bye-laws made by the commission were the Model Building Bye-Laws of 1925, see: Government of Palestine, Proclamations etc. for 1925 p. 325; For other subsidiary legislation see: The Laws of Palestine (Bentwich ed.) Cairo Vol. 2 p. 86; The Laws of Palestine, Drayton, Vol. 3 pp. 2242-3.

140. See: TPA - 1936 Report, op. cit. Table 6 p. 18.
141. TPA - 1936 Report op. cit. Table 1, p. 15.
142. Ibid pp. 7-14.
143. See: Ashworth, op. cit.; G.E. Cherry, The Evolution of British Town Planning, op. cit.; Minett op. cit.; J. Ratchliff, An Introduction to Town and Country Planning, (2nd ed.) (1981).
144. Five of these schemes were in fact submitted by one authority, Birmingham Council.
145. See: The Housing Act 1923. 13 & 14 Geo V. Ch. 24.
146. Cherry, The Housing Town Planning Etc. Act 1919, op. cit.
147. See note 143 above.
148. Ashbee, Jerusalem 1920-1922, op. cit. p. 15.
149. No. 16 of 1922, Official Gazette 1922 No. 72.
150. The title Governor which was a legacy of the Military Administration was changed in 1925 to Commissioner, see: Peel Report, op. cit. p. 159.
151. In a similar way the planning law of Israel attempted to improve the efficiency of the planning machinery. The Bar Sela Report of 1980 continued the same line of the working of planning administration (see Part II below).
152. It is however doubtful whether this part was an innovation or merely an explicit expression of the power inherent in the pre-existing law.
153. No. 36 of 1929, Official Gazette 1929 No. 244. The Bill was published in Official Gazette 1929 No. 226, January 1, 1929.
154. Explanatory Note of the 1928 draft, op. cit.
155. The Government of Palestine, Minutes of the Advisory Council Meetings 1920 - 1923, op. cit. 19th meeting July 5 1922.
156. See: The draft Town Planning (Amendment) Ordinance, 1928, Public Record Office CO 162/3.
157. Minutes of the Advisory Council Meetings, op. cit., meeting 19.

158. Ibid.
159. Ibid, per G. Symes, the then governor of the Northern District.
160. For a relevant discussion on this term see: E.W. Evans, Principles and Methods of Administration in the British Colonial Empire. (1950) pp. 9-17.
161. The fact that the period for preparing schemes was to be determined by the central commission should not be interpreted as if the commission could exempt local planning commissions from preparing such schemes.
- 161a. In later years the common practice was that even outline schemes were prepared for parts of a Town Planning Area. See below.
- 161b. Art. 10(1): The commission could also adopt with or without modification a scheme proposed by a landowner.
162. Art. 11(1) which followed sec. 13(1) of the English 1925 Act. However, the need to hold public local inquiries before the use of such power was not adopted in Palestine.
163. Art. 11(2) which followed sec. 13(1) of the English Act. However the adherence to the wording of the English section which expressed the application of the Minister's power to build up areas was redundant in view of the preexisting provision which applied schemes to any land in Palestine. The draft of this section could have thus led to confusion as to the law in force.
164. Art 10(2). But see the statement made by the High Court of Justice in Cr.A. 10/39 Attorney General V. Azori, op. cit. p. 184: "the detailed scheme had to be within the general compass of the outline scheme but as its name implied it dealt with matters not included in the outline scheme".
165. This addition was made after the publication of the Bill. It reflected the need to deal with the growing problem of overcrowding in many cities of Palestine.
166. See 1919 Act sec. 45.
167. See: Art. 12. This provision was added after the Bill was published. It adopted the provision of sec. 4 of the 1925 Act but again without proper adaptation to the existing law of Palestine.
168. See also: The Town and Country Planning Act 1932 which led to a considerable increase in the territory under interim development control. By 1939 more than half the country (24,482,263 acres) was subject to interim development control. Ashworth, op. cit. p. 224.
169. In England interim development control was extended to the entire country only in 1943 by the Town and Country Planning (Interim Development) Act 1943. 6 & 7 Geo VI Ch. 29.

170. The Expropriation of Land Ordinance No. 28 1926 Official Gazette. As mentioned the provisions in the 1921 Ordinance regarding expropriation of land were necessary to overcome the unsuitable Ottoman law. However the principal Ordinance of 1926 made those separate arrangements unnecessary.
171. The revision of Art. 22 was added after the publication of the Bill.
172. See Art. 3 of the amending Ordinance which repealed Art. 19, 20 of the 1921 Ordinance; Explanatory note of the 1928 draft, op. cit.
173. See: Report on the Palestine Administration July 1920 - December 1921, op. cit.; The Government of Palestine, Report of the High Commissioner on the Administration of Palestine 1920-1925, HMSO 1925 Colonial No. 15; Peel Report, op. cit. p. 168; Samuel, Memoirs, op. cit. pp. 161-64.
174. During the 1920's a comprehensive approach to the Empire as a whole was suggested to the Colonial Office. An "Imperial Development Plan" was outlined by Sir William McLean in his memorandum of 1925 and later in his book, op. cit. His plan stressed the development of overseas markets through improved communications by road, rail and air.
175. For the full text of the Mandate see: League of Nations: Mandate for Palestine HMSO 1922 Cmd. 1785; Bentwich, The Mandates System, (London 1930) Appendix B, pp. 137-145.
176. John Hope Simpson was appointed to carry out the survey into the conditions of Palestine. See: Sir John Hope Simpson, Report on Immigration, Land Settlement and Development, (1930), HMSO Cmd 3686.
177. R. Nathan, O. Gass, D. Creamer, Palestine: Problem and Promise, (Washington D.C. 1946), p. 242 (thereafter: Nathan et al).
178. Nathan et al p. 246.
179. Wasserstein op cit p. 85.
180. Nathan et al p. 243.
181. For construction of public housing, see: A. Gonen, Locational and Ecological Aspects of Urban Public Housing: The Israeli Case, in G. Gappert and H. Rose (eds), Social Economy of Cities, Urban Affairs Annual Review, Vol. of London 1975.
182. See: the text of the Mandate in N. Bentwich, The Mandates System, op. cit.

183. According to the first official census in 1922, there were some 752,000 inhabitants in Palestine, of whom 83,790 were Jews, 589,177 were Muslims, 71,464 Christians and 7,617 Druze and others.
184. See: Palestine: A Study of Jewish, Arab and British Policies, ESCO, Foundation for Palestine, Vol. 1, (Yale University Press 1947), pp. 329-330.
185. Wasserstein, op. cit. p. 139. See: A. Olitsur, Natural Capital and the Building of the Land, (Jerusalem 1939) (Hebrew).
186. Nathan et al, op. cit.
187. The White Paper of 1930, known as the Passfield White Paper.
188. Immigration and Settlement, op. cit.
189. Nathan et al, op. cit. p. 243.
190. See: A Ruppin, Memoires, Diaries, Letters, op. cit. p. 123.
191. See: R. Kaufmann, Planning of Jewish Settlements in Palestine, the Town Planning Review, 1926, Vol. XII, pp. 93-116.
192. Ashbee, Jerusalem 1920-1922, op. cit. p. 16.
193. The development of Haifa in this period was rather similar. It progressed in leap frogging and in filling pattern. Here again Kaufmann prepared the plans for the new Jewish neighbourhoods. See: A. Soffer, B. Kipnis (eds.), Atlas of Haifa and Mount Carmel, (Haifa 1980), pp. 51-52, 112-113.
194. G. Biger, Urban Planning and Enforcement of Building Codes, Jerusalem Institute for Israel Studies. Research Paper No. 1, (Jerusalem 1981) (Hebrew).
195. Kaufmann, op. cit. p. 101.
196. See: E. Brutzkus, Regional Policy in Israel, (Jerusalem 1970).
197. By 1925 it covered an area of about 1,100 acres compared with 30 acres in 1909. The number of buildings rose in 1925 to 2,700. See: A. Waldstein, Modern Palestine, (New York 1927), pp. 217-222.
198. Kaufmann, op. cit. p. 97.
199. See: P. Boardman, op. cit. p. 369.
200. Strangely enough, Geddes's scheme is still in force.
201. See: Neufeld, op. cit. p. 29.

202. 22 & 23 Geo V. Ch. 48.
203. See: Immigration and Settlement, op. cit. pp. 87-91; H. Kendall Village Development in Palestine, (London 1949), pp. 29-35.
204. A. Sharon, Collective Settlements in Israel, The Town Planning Review 1954-55. Vol. 25 p. 207.
205. See: Immigration and Settlement, op. cit. p. 92.
206. V. Milstein, Settlement Strategy from the Beginning of Zionism to the Establishment of the State, Kivunim, World Zionist Organisation, No. 11, 1981, pp. 5-88 (Hebrew).
207. The Ottoman Land Code of 1858 (A.H. 1274) Articles 31-32; The Ottoman Law of Disposition of 1913 (A.H. 1331) Articles 5-6; See: Goadby and Douckan, op. cit. p. 31; Ben Shemesh, op. cit. pp. 77, 145, 197.
208. See: Goadby & Douckan, op. cit; Ben Shemesh, op. cit.
209. See: Kaufmann, Preliminary Scheme for Opening up the Territory of Haifa Bay, Palestine, The Town Planning Review 1927, Vol. XII, pp. 206-211.
210. U. Milstein, op. cit.
211. See: Report of the Commission of Palestine, Disturbances of August 1929 (Known as the Shaw Commission) 1930, HMSO Cmd 3530; C.L. Upthegrove, op. cit. pp. 147-152.

Chapter 5

1. No. 28 of 1936, Palestine Gazette Extraordinary, Supp. 1 No. 589, p. 157; the Bill was published in the Palestine Gazette 1935, No. 526, p. 641.
2. Op. cit. pp. 158-168.
3. Art. 3(1)
4. As a matter of common practice the Municipal Engineer was invited to the meetings of the District Commission when matters concerning his municipality were under consideration. See: TPA - 1936 Report, op. cit.
5. The Chief Administrator often acted on behalf of the High Commissioner in planning matters.
6. TPA - 1936 Report, op. cit.
7. Kendall wrote in his letter of May 3, 1983 to the writer of this work: "There were no clashes on major policy between the various

Commissions; details of building and planning law were similar in all areas. The presence on all commissions of the TPA (Town Planning Officer) and the LD (Legal Draftsman) ensured this cohesion".

8. For a different attitude towards the machinery of planning in the post-war period, see below.
9. See: Art. 6.
10. The term "Municipal Corporation" was introduced by the new Ordinance which replaced the Ottoman Municipal Law. See: Municipal Corporation Ordinance 1934, op. cit.
11. This position where one legal body was acting under two capacities caused some confusion. In HCJ 122/43 Hass V Municipal Council of Haifa, the Court held that in spite of the two functions of the Municipal Council as a local government body and as a planning commission, it had one identity as that of a Municipal Council [(1944), 1 A.L.R. p. 12].
12. In such urban or rural areas the local government bodies were local Councils under the Local Council Ordinance 1921.
13. Art. 7; A suggestion made by four Jewish local councils that the local councils should form a local planning commission was rejected by the British Administration. The then Attorney General Trusted wrote: "It is preferable that the discretion should be left in the hands of the District Commission under sec. 7 of nominating some or even all the members of a local Council to be upon the Local Commission as it sees fit". (See: the A.G. Memorandum on criticism and proposed Amendments to the draft Town Planning Ordinance 1935, Public Record Office, CO 733/302/11); Eventually the recommendation of the Jewish Agency to include at least two non-official members in such local commission got through into the Ordinance. Ibid.
14. A recommendation to vest in the local commissions the power to make planning bye-laws was rejected. Ibid.
15. H.C. 37/39 Keren Kayemet Leisrael V District Town Planner Commission (Jerusalem 1939) 6 P.L.R. pp. 422, 425, per. Copland J.
16. Both Jews and Arabs suggested that District Commissions should include local elected members as representatives of the local population. The Association of Engineers and Architects also asked to be represented in these bodies. However, the British Administration refused such participation. The then High Commissioner Arthur Wanchop rejected even the proposal of the Attorney General to appoint two non-official members to each commission. In a dispatch to the Colonial Secretary (J.H. Thomas) of May 28, 1936, he wrote: "It was desirable that the new organisation of District Commissions should be given an opportunity of starting to work without the impediment of unofficial membership and there should be no unofficial members

for say two or three years after which it might be judged in the light of experience whether unofficial members might without detriment be appointed. Meanwhile District Commissions would call on members of the public when necessary to give advice or to lay evidence before the District Commission". (Public Record Office, CO 733/302/11).

17. Art. 12, 14, 15(2).
18. Art. 12(2).
19. Art. 12(2).
20. Art. 12(3) provided that an outline scheme should be accompanied by a plan/plans of the area. Such explicit requirement was omitted (probably by mistake) from the 1929 Ordinance. See above.
21. Art. 14(2).
22. In C.A. 153/43 Municipal Council of Haifa V Yacoub [(1943) 10 P.L.R. pp. 306-307] the court held that the cost of construction of public roads or streets could not be imposed in an outline scheme. The court however pointed out that the law gives power to make such provisions in a detailed scheme (Sec. 12(2).) In my view, this final addition which was obiter dictum was not an accurate expansion of the powers of the authorities, since detailed schemes could provide merely for betterment tax and not for other taxes."
23. Art. 20.
24. See: TPA - 1936 Report, op. cit. p. 6.
25. Art. 20(1). However the submission of such schemes became a common practice. See: TPA - 1936 Report, op. cit. p. 6.
26. Art. 20(2),(3),(4),(5),(6),(7).
27. On the English law see: S. Ward, The Town and Country Planning Act 1932, The Planner, Journal of the RTPI, Vol. 60 1974, pp. 658-9.
28. Art. 28 changed the provision of Art. 23 of the 1921 Ordinance. See: The explanatory note of the Attorney General in the Bill, Palestine Gazette 1935 No. 526, p. 641, 655.
29. Art. 27. This extension was suggested by the Town Planning Adviser Henry Kendall. See: The Attorney General's memorandum op. cit.
30. The Colonial Secretary (W. Ormsby-Gore) in his comments on the draft legislation from August 18, 1936, noted that this was a rather extensive power, and it would be more appropriate to notify the landowner prior to taking such possession. (See: the replies of the High Commissioner A. Wauchope of 25.11.36 and the

Chief Secretary of 7.3.37). As a result of this comment the provision was later amended by the 1938 Ordinance which provided that the owner should be given one month's notice. See: Public Record Office CO 733/302/11.

31. Art. 27. However the High Commissioner, in his dispatch of May 28, 1936 (op. cit.) wrote that "It had been arranged that applications under this provision for compensation on the grounds of hardship should be considered sympathetically".
32. Op. cit. p. 184.
33. Op. cit.
34. Op. cit. p. 426.
35. Art. 5(f).
36. The Colonial Secretary (August 18, 1936) made this comment on Art. 5(f), The High Commissioner replied (25.11.36) that this power was required when dealing with the particular case of the building of Haifa's harbour.
37. Art. 13(b). See also Art. 12(c) of the 1921 Ordinance.
38. The Attorney General memorandum op. cit. p. 6.
39. Art. 14(2)(m)(n).
40. See: The Attorney General Memorandum, op. cit. p. 6.
41. Art. 32(1).
42. The Attorney General Memorandum, op. cit. p. 6.
43. Art. 11(b). This amendment was recommended by the Town Planning Adviser.
44. Art. 35(1)(ii). This power was seen by the Colonial Secretary (op. cit.) as a rather extensive one.
45. See: The High Commissioner replies to the Colonial Secretary, op. cit.
46. The Government of Palestine, Town Planner Adviser Annual Report for the year 1937 (Jerusalem 1938) (thereafter TPA - 1937 Report), p. 18.
47. The Government of Palestine, Town Planning Adviser Annual Report for the year 1938 (Jerusalem 1939) (thereafter TPA - 1938 Report), p. 6, 26.
48. For a list of those areas, see the draft Town and Country Planning Ordinance 1945, Palestine Gazette Extraordinary Supplement 3, No. 1431, p. 897.

49. TPA - 1936, 1937, 1938 Reports, op. cit.
50. Ibid.
51. TPA - 1937 Report, op. cit.
52. See: Peel Report, op. cit.
53. See: Ashworth, op. cit. pp. 227-232.
54. Such as Abercrombie's plan of London.
55. In 1936, 1938, 1939, 1941.
56. See for example the Town Planning (Amendment) Ordinance, No. 58 of 1936, Palestine Gazette 1936, supp. 1, No. 620, p. 245, was enacted even before coming into force of the principal Ordinance of 1936 in order to cure a technical-legal defect. See: Public Record Office CO 733/702/11.
57. No. 8 of 1938 Palestine Gazette, Sup. 1., No. 758, p. 14.
58. TPA - 1938 Report, op. cit.
59. See: the draft Town Planning (Amendment) Ordinance 1937, Palestine Gazette 1937, No. 719, p. 867; See also comments of the legal draftsman R. Windham, Public Record Office CO 733/338/75291.
60. Sec. 35.
61. No. 5 of 1939 Palestine Gazette, Sup. 1, No. 862, p. 9.
62. Sec. 18(a). Similar powers of approval were given to the District Commissions for any modification annulment or suspension of a detailed scheme. See: Sec. 19; In regard to these powers the Colonial Office was hesitant as to the desirability of expanding the discretion of the district commissions at the expense of the High Commissioner's powers, but in the end one official concluded: "As outline schemes will still be subject to the approval of the High Commissioner, I see no objection to this devolution of control". See the internal correspondence of 31.10.38, Public Record Office CO 733/376/75291.
63. Sec. 18. For modification annulment or suspension of an outline scheme see Sec. 12.
64. Sec. 7.
65. See the explanatory note of the Attorney General in the draft Town Planning (Amendment) Ordinance 1938, Palestine Gazette 1938, pp. 1346, 1348.
66. Sec. 11(b).

67. See the explanatory note, op. cit. Although the Colonial Office approved this amendment it expressed some hesitations about this section. As one official wrote: "I am somewhat doubtful as to the desirability of relaxing the strict control of town planning as it seems that in the most urban areas intensification rather than relaxing the strict control would be desirable. On the other hand the discretion given to District Commissions by the new clause is largely a matter of purely local concern in which I doubt if we should be justified in interfering and on the whole I am inclined to suggest that we should let the clause stand". (Public Record Office CO 733/376/75291).
68. No. 31 of 1941, Palestine Gazette 1139, Sup. 1, p. 99.
69. See the comments of the Attorney General, Public Record Office CO 733/440/75291.
70. Sec. 35, 36.
71. Sec. 35(2).
72. Defence (Control of Engineering, Building and Hardware Material) Order 1942, Supp. No. 2 to the Palestine Gazette Extraordinary, No. 1170, Vol. I., p. 341.
73. Sheffer, op. cit. pp. 124-5.
74. A. Aram-Glikson, The Approach to Town Planning in Israel, Journal of the American Institute of Planners XVII (1951) p. 38.
75. Town planning legislation did not bind any development activities of the government, owing to the prerogative of the Crown under the Interpretation Ordinance, Sec. 42; On this aspect see M.D. Gouldman, Legal Aspects of Town Planning in Israel, (Jerusalem 1966) p. 97.
76. TPA - 1936 Report, op. cit.; TPA - 1937 Report, op. cit. p. 20.
77. H. Kendall, Village Development in Palestine, (London 1949).
78. Immigration and Settlements, op. cit. Table 1, p. 48.
79. Nathan et al, op. cit. p. 243.
80. Op. cit. p. 254.
81. Op. cit. p. 255.
82. Nathan et al, op. cit. pp. 253-258; Sharon, Planning in Israel, op. cit. p. 69.

83. See: S. Reichman, From Foothold to Settled Territory 1918-1948 (Jerusalem 1978) (Hebrew).
84. See: Chapter 2 of this work.
85. Palestine Gazette Extraordinary 1945, Sup. 3, No. 1431, p. 897.
86. Palestine Gazette Extraordinary 1947, Sup. 3, No. 1583, p. 115.
87. See: the first schedule to the 1945 and 1947 Bills; In 1936 a "Building Bye-Laws Committee" was appointed to enquire into the desirability of revising the building bye-laws presently in force and the manner in which these laws should be applied with the object of securing clear and more effective control over the erection of buildings in Palestine. (See: TPA - 1936 Report, op. cit. p. 13). However, by 1945 there were 65 sets of bye-laws and 5 sets of rules. See: A dispatch from the Chief Administrator to the Colonial Secretary of August 9, 1945 (Public Record Office CO 733/458/75291).
88. See comment in Kendall, Jerusalem City Plan, op. cit. p. 53.
89. Among the material collected were the Report of the Barlow, Uthwatt and Scott Committees.
90. As the 1947 Bill was the last version of planning legislation, references are made to this Bill unless otherwise stated.

PART II

Chapter 6

1. For Israel's special geographical conditions see: E. Orni & E. Efrat, A Geography of Israel, (1963 Jerusalem) (Hebrew).
2. The semi-urban villages (known as "Moshavot") were the privately owned rural settlements of the coastal plain which were in a process of urbanisation. One example of such a village, Petach Tiqva, is analysed by Y. Agmon in D. Weintzaub et al. Moshav, Kibbutz and Moshava, (1969).
3. The ratio among the Arabs was 78% of rural population and 22% urban, see: J. Landau, The Arabs in Israel, (Oxford 1969), p. 3.
4. Ibid.
5. The Royal Commission on the Distribution of the Industrial Population, Cmd. 6513 (1940).
6. See Part I of this work.
7. 4 L.S.I. p. 114.
8. M. Goldman (ed.), Society in Israel 1980, Statistical Highlights, (Jerusalem 1980).
9. There is no way of substantiating any figure of Arab refugees and the figure of 500,000 is not free of dispute.
10. Landau, op. cit.
11. See: Statistical Abstract of Israel, No. 17, (1966).
12. See: S. Eisenstadt, Israeli Society, (London 1967).
13. A. Haber, Population and Building in Israel 1948-1973, (Jerusalem 1945).
14. Israel Pocket Library, Immigration and Settlement, (Jerusalem 1973).
15. H. Shimshoni, Housing and Regional Planning in Israel, Report of Proceedings, in Town and Country Summer School, (University of Exeter 1964) pp. 108-124.
16. B. Akzin & Y. Dror, Israel, High Pressure Planning, (1966).
17. D. Horowitz, The Development of the Economy of Israel, in H.V. Prochnow (ed.) World Economic Problems (New York 1965) p. 12.

18. B. Akzin & Y. Dror, op. cit.
19. D. Horowitz & M. Lissak, Origins of the Israeli Polity, (London 1978); E. Etzioni-Halevy, Political Culture in Israel, (New York 1977).
20. D. Shimshony, Israeli Democracy, (New York 1982).
21. B. Akzin, The Role of Parties in Israeli Democracy, 27, Journal of Politics (1955) p. 513.
22. S. Weiss, The Upheaval, (Tel Aviv 1979) (Hebrew).
23. D. Giladi, Private Initiative, National Capital and the Political Crystallisation of the Right, in S. Eisenstadt et al (ed.), The Social Structure of Israel (Jerusalem 1975), p. 86.
24. E. Cohen, The City in Zionist Ideology, (Jerusalem 1970); Dr. A. Boneh, The Village and the City in Jewish Eretz Israel in The Social Nature of the Jewish Village in Eretz Israel, (Jerusalem 1945) (Hebrew).
25. A. Rubinstein, The Constitutional Law of the State of Israel, (3rd ed.) (Tel Aviv 1981) (Hebrew).
26. 1 L.S.I. p. 7; See: Sec. 11.
27. See: Law and Administrative Ordinance, op. cit; Transition Law 5709 - 1949, 3 L.S.I. p. 3.
28. Y. Zemach, Political Questions in the Courts; Judicial Function in Democracies Israel and the United States, (Detroit 1976).
29. Ibid.
30. These institutions were non-elected bodies but, nevertheless, were representative bodies. The composition of their members was agreed upon by all political parties.
31. Horowitz & Lissak op. cit.
32. It should be noted that the district (regional) administration was not an intermediate level of government in the sense of a federal system (U.S.A./Germany), nor was it based on elected bodies such as the British County Councils. It was merely a branch of the central government.
33. Z. Sharef, Three Days, (Tel Aviv 1959) (Hebrew); Y. Viness, Z. Zilbiger, Readings in Law and Administrative Proceedings, (3rd ed.) (Jerusalem 1954) (Hebrew).
34. Y. Freudenheim, Government in Israel, (5th ed.) (Jerusalem 1973) (Hebrew).

35. See: The State Property Law 5711 - 1957 L.S.I.
36. Y. Aharoni, State Owned Enterprises in Israel and Abroad, (Tel Aviv 1979).
37. Absentees Property Law 1956 L.S.I.
38. I. Brutzkus, Regional Policy in Israel, (Jerusalem 1970).
39. See Basic Law: Israel Lands, 14, L.S.I. p. 48; Israel Lands Administration, 14, L.S.I. p. 50.
40. I. Brutzkus op. cit.
41. F. Schaffer, The New Town Story, (1972).
42. Nonetheless, in some cases land had to be expropriated for the establishment of new towns. For example, Arab land was expropriated for the erection of Karmiel in the Galilee.
43. M. Heth, The Legal Framework of Economic Activity in Israel, (1967).
44. E. Samuel, British Traditions in the Administration of Israel, (1957).
45. Horowitz & Lissak, op. cit.; Shimshon, op. cit.
46. G. Caiden, Israel's Administrative Culture, (Berkley 1970); Akzin & Dror, op. cit.
47. Horowitz & Lissak, op. cit.
48. Sheref, op. cit.
49. Horowitz & Lissak, op. cit. p. 195.
50. S. Weiss, Conservative Structures and Flexibility in Functioning: The Israeli Version, (Tel Aviv 1974) (Hebrew); Horowitz & Lissak, op. cit.
- 50A. Prof. S. Weiss explains the administrative behaviour of local authorities which was sometimes even illegal as an expression of liberation from the shackles of central government control. See: S. Weiss, Local Government in Israel, (Tel Aviv 1972) (Hebrew).
51. See: State Service (Appointments) Law 5719 - 1959. 13 L.S.I. p. 87; State Service (Restriction on Party-Political Activity and Fund-Raising) Law 5719 - 1959, 12 L.S.I. p. 203.
52. A. Rubinstein, op. cit.

53. President I. Olsham, On the Supreme Court: Six Cases, (1969), p. 287 (Hebrew); E. Rubinstein, A History of the Israeli Supreme Court, (Tel Aviv 1980) (Hebrew); J. Laufer, Israel's Supreme Court: The First Decade, in Kittrie (ed.) Comparative Law of Israel and the Middle East (1971), pp. 109-128.
54. State Comptroller Law 5709 - 1949, 3 L.S.I. p. 23.
55. State Comptroller Law (Consolidated Version) 12 L.S.I. p. 107, Sec. 10(2).
56. Ibid, Sec. 10(3).
57. See: Y. Freudenheim, op. cit. pp. 417-431.

Chapter 7

1. Sharef, op. cit. p. 51.
2. The legal powers of the High Commissioner in regard to town planning were passed to the Minister of Labour; See: Law And Administration Ordinance, Sec. 2(E); Official Gazette (1949), p. 22.
3. The Physical Planning Department was established as soon as three months after the establishment of the State. See: Brutzkus, op. cit.; S. Reichman & M. Yehudai, A Survey of Innovative Planning 1948-1965, Part I (Jerusalem 1948).
4. A group of architects and engineers who worked during the Mandatory period for the central and local planning authorities joined the newly established department. See: M. Bentov, The Days Tell My Story, (Tel Aviv 1984) (Hebrew); Brutzkus, op. cit.; Reichman & Yehudai, op. cit.; Shimshoni, op. cit. p. 384.
5. Government Yearbook 5710, Vol. I. p. 18 (Hebrew).
6. 54 Yalkut Hapirsumim (Official Notices) p. 354.
7. Akzin & Dror, op. cit.; Reichman & Yehudai, op. cit.
8. Reichman & Yehudai, op. cit.
9. Delegation of Powers (District Commissioners and District Officers) Law 5724 - 1964. 18 L.S.I. p. 70; Y. Freudenheim, op. cit.
10. See below.
11. See: Shimshoni, op. cit. Figures 8.2, 8.3

12. Information given to the writer of this work from an official in the Ministry of the Interior.
13. Government Yearbook, 5715 - 1954 p. 173; 5710 - 1955 p. 237; 5719 - 1958 p. 322.
14. Brutzkus op. cit; E. Brutzkus, Physical Planning in Israel, (Jerusalem 1964).
15. Ibid.
16. J. Dash, E. Efrat, The Israel Physical Master Plan, (Jerusalem 1964), p. 23.
17. E. Cohen et. al. Research Into the Absorption of Immigrants in Development Towns, (Jerusalem 1962); E. Cohen, Development Towns: The Social Dynamics of "Planted" Urban Communities in Israel, in S.N. Eisenstadt (ed.) Integration & Development in Israel, (New York 1970).
18. Ibid.
19. E. Cohen, op. cit.
20. Brutzkus, op. cit.
21. J.B. Cullingworth, Town and Country Planning in Britain, (8th ed.) (London 1982); G.E. Cherry, The Evolution of British Town Planning, (London 1974); P. McAuslan, Land, Law and Planning, (London 1975).
22. Government Yearbook, 1950, p. 162.
23. N. Menuhin & H. Ludmer, The Second Tier of Government in Israel: The District Government, (1982).
24. J. Ratcliff, An Introduction to Town and Country Planning, (2nd ed.) (London 1981) p. 85.
25. Gouldman, Legal Aspects, op. cit. p. 10.
26. These figures were taken from J.B. Cullingworth, op. cit. Table 6.
27. L. Keeble, Town Planning at the Crossroads, (London 1961) p. 198.
28. J. Ratcliff, op. cit. p. 106.
29. About this plan, see below.
30. State Comptroller 24 Annual Report 1974 p. 547; 30 Annual Report 1980, p. 411 (Hebrew).
31. Ibid.

32. Town Planning Ordinance (Amendment) Law 5714 - 1954, 8 L.S.I. p. 204.
33. Sec. 3; The large number of members barely allowed efficient functioning of the commission, yet the law at the time did not permit delegation of powers to sub-committees. See: M. Gouldman, Legal Aspects of Town Planning in Israel, (Jerusalem 1966).
34. Sec. 3(j).
35. Ibid.
36. Sec. 3(b).
37. See: Part I of this work.
38. Sec. 3(c).
39. E. Sharp, The Ministry of Housing and Local Government, (London 1969) pp. 21-22; P. McAuslan, op. cit. p. 78.
40. A. Sharon, op. cit.; Brutzkus, op. cit.
41. Devrei HaKnesset (Knesset Records) Vol. 37, p. 1831 (Hebrew); E. Efrat, The Israel Physical Master Plan, in A. Shachar, Cities in Israel (Jerusalem 1973), pp. 142-154 (Hebrew).
42. Approved 13.3.49. "The Basic Principles of the Government Program" are not legally binding but merely represent the political undertaking of the government. A. Rubinstein, op. cit.
43. Government Yearbook 1949, Chap. 6.
44. Op. cit. 6(2), 6(3).
45. Reichman, op. cit.; Reichman & Vehudai, op. cit.
46. See: Part I of this work.
47. Reichman, op. cit.; Brutzkus, op. cit.
48. A. Sharon, op. cit.
49. Ibid.
50. Brutzkus, op. cit.
51. Op. cit.
52. Based on Statistical Abstract of Israel, No. 17 1966.
53. Brutzkus, op. cit.
54. Ibid.
55. Sharon, op. cit.

56. L. Mumford, The Story of Utopias, (New York 1922); The Culture of Cities, (New York 1938); see also: The City in History: Its Origins, Transformation and its Property, (1961).
57. W. Christaller, Central Places in Southern Germany, (trans. by C. Baskin), (Prentice-Hall 1966); See: E. Efrat, Elements of Urban Geography, (Tel Aviv 1979) (Hebrew).
58. E. Cohen, The City, op. cit.
59. H. Hashimshony, op. cit.
60. D. Cadman, Planning: Who Needs It?, 69 The Planner 1983, pp. 207-208.
61. The Lakhish Region, Background study for research in regional development planning, (Rehovot 1970).
62. Amiran D.H.K. & Shachar A., Development Towns in Israel, (Jerusalem 1969); E. Efrat, Towns and Urbanisation in Israel, (Tel Aviv 1976) (Hebrew).
63. Ibid.
64. Since there are different definitions of new towns, the number of such towns is changed according to various perspectives. See: N. Lichfield, Israel's New Town: A Strategy for the Future, (3 Vols.) (Tel Aviv 1971); E. Spiegel, New Towns in Israel: Urban and Regional Planning and Development, (New York 1967); A. Berler, New Towns in Israel, (Jerusalem 1970) (Hebrew).
65. Shimshoni, op. cit. p. 117.
66. E. Cohen, Population Dispersal and the Integration of Immigrants as Conflicting Objectives, in The Integration of Immigrants from Different Countries of Origin in Israel, (Jerusalem 1961), pp. 143-157 (Hebrew).
67. See: First Report submitted to the Minister's Committee for Population Dispersal (1964) (Kochav Report); Brutzkus op. cit.
68. Reichman, op. cit.
69. Immigration and Settlement, op. cit.
70. M. Yaakovobitz, The Water in Israel, (1971).
71. Shimshoni, op. cit. Chap. 3.
72. During the early 1950's, Levi Eshkol served as the Minister of Agriculture as well as the head of the Settlement Department of the Jewish Agency.

73. See: The Basic Principles of the Government Program; E. Cohen, The City, op. cit.
74. S. Pohzyles, The Agriculture in Israel: A Model of Economic Planning, (Tel Aviv 1974).
75. Op. cit.
76. A. Landau, Overall Planning of Agriculture in Israel, in "Principal Aspects of Agricultural Planning in Israel" (Tel Aviv 1971); Pohzyles, op. cit.
77. Ibid.
78. M. Flour, Activities for Presentation of Agricultural Land, in Karka No. 19 1980, pp. 42-49 (Hebrew).
79. Ministry of Finance, Data and Plans, submitted to the Jerusalem Conference 1953.
80. Sharon, op. cit.; Brutzkus, op. cit.
81. Sharon, op. cit.
82. Ibid.
83. Aktzin & Dror, op. cit.
84. Ministry of Commerce and Industry, Forecast of Developments in Israel's Industry 1960-1965.
85. Y. Aharoni, op. cit.
86. 4 L.S.I. p. 93.
87. See: Encouragement of Capital Investments Law (Consolidated Version) 5718 - 1959 13 L.S.I., p. 258.
88. The privileges offered under the law included exemption from taxes, deferrment of fees and customs relief. In addition, the government could grant to an "Approved Enterprise" loans out of its development budget and other funds.
89. See: M. Heth, The Legal Framework of Economic Activity in Israel, (New York 1967).
90. Ibid.
91. Brutzkus, op. cit.
92. Ibid.
93. Sharon, op. cit.

94. E. Efrat, Settlement Geography of Israel, (Tel Aviv 1981) (Hebrew); E. Efrat, Israel Towards Year 2000, (Tel Aviv 1978) (Hebrew).
95. See: Roads (Construction and Improvement) (Defense) Ordinance 1943, Palestine Gazette 1943, Supp. I 1305, p. 55; Roads and Railways (Defense and Development) Ordinance (Amendment) Law 5711 - 1951, 5 L.S.I. p. 66.
96. Aktzin & Dror, op. cit.
97. State Comptroller, 8 Annual Report for 1956/7; Aktzin & Dror, op. cit.
98. Ibid.
99. Sharon, op. cit.
100. E. Brutkus, Physical Planning in Israel, Problems and Achievements, (Jerusalem 1964).
101. On the role of the society in the protection of the environment, see: S. Amir & R. Stern, The Society for the Protection of Nature: Its Potential Involvement in the Protection of the Quality of the Environment, (Haifa 1974) (Hebrew).
102. V. Brachya & P. Mandelbaum (ed.) Settlement in Israel, Environmental Publication No. 76-01 (Jerusalem 1976).
103. 17 L.S.I. p. 184.
104. Town Planning Ordinance (Amendment) Law 5712 - 1951, 6 L.S.I. p. 9.
105. Town Planning Ordinance (Amendment) Law 5719 - 1959, 13 L.S.I. p.-98.
106. Cf. the position in Britain was not only that carrying out of development without permission is not in itself a criminal offence, but also enforcement is at the discretion of the local planning authority. See: D. Heap, An Outline of Planning Law, (7th ed.) (1978); R. Hamilton, Development and Planning, (6th ed.) (1975).
107. State Comptroller, 11 Annual Report for 1960, pp. 339-347; 13 Annual Report for 1962 p. 389 (Hebrew).
108. Shimshoni, op. cit. p. 383; see also: Gouldman, op. cit.
109. By comparison, the power of law to change social behaviour even when such behaviour evokes moral condemnation; e.g. racial discrimination, is still a controversial issue. Prof. Jowell claims that a law against discrimination is likely to diminish prejudice and thus discrimination. See: J. Jowell, The Administrative Enforcement of Laws Against Discrimination,

1965 Public Law, pp. 119-186, 169; See also: J. Jowell's review of L.H. Myhew, Law and Equal Opportunity: A Study of the Massachusetts Commission Against Discrimination, (1969) in 83 Harvard Law Review, I (1969-1970), p. 283.

This view of law as a tool of social engineering stood against the more traditional perceptions such as of Sumner, in Folkways, A Study of the Sociological Importance of Usages, Manners, Customs and Morals, (1906) and his disciples who claim that laws are effective only if consistent with the prevailing mores and public attitudes.

110. State Comptroller 11 Annual Report for 1960 p. 339; 18 Annual Report for 1968 pp. 440-441.
111. Shimshoni, op. cit. p. 392; Of the similar situation in London, see J. Jowell & D. Millchap, The Enforcement of Control in London, (1983) J.P.L. p. 644.
112. Town Planning Ordinance (Amendment) Law 57 - 1957. 11 L.S.I. p. 644.
113. See: The 1945 and 1947 Bills, Supra, Chap. 5. Notes 85, 86.
114. Sec. 14(K) as amended by the 1957 Amendment.
115. Sec. 20(A).
116. Sec. 20A(c),(d).
117. Sec. 20(F).
118. See: Sec. 16 of the Town Planning Ordinance 1936.
119. Horowitz & Lissak, op. cit.
120. A. Drachlis, Sub-Municipalities. For the consolidation of Municipal Democracy (1953) and J. Ben-Dack, Towards Cooperation of Quarters in Municipal Government, in J. Ben-Dack (ed.) Neighbourhoods' and Quarters' Committees in Big Towns, (Jerusalem 1984) (Hebrew).
121. See: HCJ 4/55 Ein Harod V The Minister of the Interior, 9 P.D. 1530.
122. Hansard, 1946, Vol. 432, Col. 963.
123. See: Ministry of the Interior, Ministry of Finance, A Plan for the Geographical Distribution of Israel's Population of Five Million, (Jerusalem 1972), Vol. II. p. 3 (Hebrew); Aktzin & Dror, op. cit.
124. Brutzkus, op. cit.
125. E. Cohen, Population Dispersal, op. cit.

126. Brutzkus, op. cit.; Dash & Efrat, op. cit.
127. Kochav Report 1965, op. cit.
128. Sharon, op. cit.
129. Ibid.
130. Ibid, Government Yearbook 5712 p. 417; Government Yearbook 5713 p. 157.
131. State Comptroller 11 Annual Report for 1960 p. 339; N. Lichfield, The Israeli Physical Planning System: Some Needed Changes, 15 The Israel Annual of Public Administration and Public Policy (1976), pp. 35-58 at p. 46.
132. Assertion against spots zoning was also raised in CA 577/66 Volochwinski V Ofer 21 P.D. Part II p. 36.
133. Supra, Chap. 5 of this work.
134. Supra.
135. Y. Ben Sira, The Story of National and Regional Planning, 6 Handasa and Adrichalut, Vol. 16 (1958) pp. 146-8 (Hebrew).
136. Gouldmann, op. cit.
137. 389 Proposed Laws 5719, p. 277 (Hebrew).
138. Planning and Building Bill 5773 - 1962. 532. Proposed Laws 5723 p. 14 (Hebrew).
139. Zemach, op. cit.
140. H.C.J. 102/52 Trans-Yarkon Landowners' Association V The Minister of the Interior, 6 P.D. 827; Gouldmann, op. cit. p. 33.
141. De Smith Judicial Review of Administrative Action (4th ed.) (London 1980) p. 286. Among the English rulings of that period were the City of Plymouth (City Centre) Declaratory Order 1946, Robinson V Minister of Town and Country Planning (1947) 1 ALL.E.R. 851; Earl of Iveogh V Minister of Housing and Local Government (1961) 3 ALL.E.R. 98 102.
142. See: H.C. 109/45 Abu Ta'ah V Jerusalem Local Building and Town Planning (1946) A.L.K. p. 167. "The High Court will not interfere with a refusal of a building permit unless satisfied that the permit was refused capriciously and on no reasonable grounds".
143. Zemach, op. cit.
144. HCJ 16/48 Brunn V The Prime Minister. 1 P.D. 109, 113. The translation from Hebrew was done by the writer of this work.

145. Justice Berenson in HCJ 185/62 T.D.H.Z. V Northern District Building and Town Planning Commission. 17 P.D. p. 272, 275.
146. See also: Gouldmann, op. cit.
147. 5 P.D. 229, 233.
148. The objectives mentioned by Justice Agranat are considered in this work as merely the ostensible rationale for the planning legislation, but not the real reasons for the exercise of statutory planning in Palestine. See Parts I and II of this work.
149. In CA 416/58 Gadman V Salamann (13 P.D. p. 916), the High Court went further in indicating the significance of town planning provisions in private law. The court provided that statutory planning provisions are aimed at protecting the neighbours as well as the general public. Thus carrying out of development without permission can be a civil wrong actionable at the suit of a private person. In this respect the Israeli law differs from English law; Cf. Buxton V Minister of Housing [1961] 1 Q.B. 278; J. Alder, Development Control (London 1979) p. 3; Cf. the distinction between proceedings regarding nuisance and proceedings regarding planning blight, McAuslan, Land, Law and Planning, op. cit. p. 48.
150. As for refusal of planning permission, this falls within the sphere of applicant-authorities relations. Thus the applicant could challenge such decisions in the High Court of Justice.
151. 16 P.D. 550.
152. HCJ 60/56 Parsi V Jerusalem District Building and Town Planning Commission 10 P.D. 1785.
153. Op. cit. p. 1789.
154. In England the laws (Town and Country Planning Act 1947 and 1962) gave the Minister the power to refuse approval of a development plan if, in his view, the compulsory purchase is not likely to take place within ten years of the approval. Another provision prescribed a limit of 12 years for compulsory purchase from the date of approval of the plan.
155. In HCJ 75/57 Klems V Tel Aviv Local Building and Town Planning Commission (11 P.D. p. 1601) Justice Zussman expressed the view that the heavy burden of tax in Israel justifies a shorter time limit than 12 years for the actual exercise of compulsory purchase.
156. C.A. 120/60 Halperin V Kutchinski 15 P.D. p. 705.
157. Op. cit.
158. Op. cit. p. 1532.

159. HCJ 335/62 Abu Gosh V Jerusalem District Building and Town Planning 17 P.D. p. 526; HCJ 185/62 T.D.H.Z. op. cit; Cf. ruling in Britain, Westminster Bank Ltd. V Minister of Housing and Local Government [1970] 2 W.L.R. 645, 652: Alder, op. cit.
160. 19 P.D. Part I, p. 95.
161. Op. cit.
162. See: HCJ 16/50 Igra Rama op. cit.
163. 9 P.D. p. 1560.
164. Cf. Lord Denning in Pyx Granite V Minister of Housing and Local Government, 1958, 1 Q.B. 554 at p. 572.
165. Pharmacists Ordinance (Amendment No. 2) Law, 5724 - 1964 18 L.S.I. p. 99.
166. Ibid Sec. 43A.
167. In another example, special legislation was introduced in order to provide for the establishment of a controversial planning project of Tel Aviv's power station, known as Reading D. See: Tel Aviv Power Station Law 5727 - 1967 21 L.S.I. p. 141; R. Laster, Reading D: Planning and Building or Building and then Planning? 8 Israel Law Review 1973 pp. 481-505.
168. 19 P.D. Part I p. 337.
169. Pig-Raising Prohibition Law 5722 - 1962 16 L.S.I. p. 93.
170. At p. 1567; R. Alterman rightly pointed out that Justice Berenson's view resembles the views of the American lawyer and planner Edward Bassett in The Master Plan (N.Y. 1938). See: R. Altermann, The Planning and Building Law and the Local Plan: A Rigid Regulation or a Flexible Framework?, 11 Mishpatim, pp. 197-220.
171. 18 P.D. Part II p. 287.
172. At p. 292.
173. (1959) 2 ALL.E.R. 321.
174. J. Jowell, Bargaining in Development Control, (1977) J.P.L. pp. 414-435 at p. 414.
175. Op. cit.
176. 11 P.D. p. 660.
177. E.A. 136/52 Bat Galim Ltd. V Bat Galim Sea Coast Enterprises Ltd. 9 P.D. p. 75; HCJ 180/52 Ibrahim V The Minister of Finance, 6 P.D. p. 908.

178. HCJ 195/62 T.D.H.Z. op. cit.
179. See: Gouldmann, op. cit. Chap. 9.

Chapter 8

1. 19 L.S.I. p. 330. This law underwent 21 amendments from 1965 to 1984.
2. See: Speech of H. Landau M.K. to the Knesset in the first reading of the 1962 Bill (Knesset Records [Divrei Ha'Knesset] Vol. 37, p. 1832.)
3. 17 Statistical Abstract of Israel 1966 Table B/1; 33 Statistical Abstract of Israel 1982 Table B/1: The figures given for the year 1981 include those territories under the jurisdiction of the Israeli law; i.e. East Jerusalem and the Golan Heights.
4. Ibid.
5. Op. cit. 1966 Table B/8; 1982 Table B/11.
6. E. Cohen, The City, op. cit; S. Dshen, Social Organisation and Politics in Israeli Urban Quarters, 22 The Jerusalem Quarterly (Winter 1982).
7. The bold intervention of the High Court came to a peak in its review of the legality of a primary legislation; See: H.C.J. 98/69 Bergman V The Minister of Finance 23 P.D. Part I p. 693; Zemach op. cit.)

The State Comptroller was also given during this period the task of ombudsman to deal with complaints from the public concerning the administration. See: State Comptroller (Amendment No. 5) Law 5731 - 1971 25 L.S.I. p. 111.
8. Infra.
9. The planning institutions which operate in the administered territories of Judea, Samaria and the Gaza Strip are "non-statutory" only from the point of view of the Israeli statutory planning. They nonetheless operate under international law and the local legal system which prevails in these territories. See: M. Drori, The Legal System in Judea and Samaria: The Previous Decade and a Glance at the Future, 8 Israel Yearbook on Human Rights (1978) p. 144; HCJ 128/83 Harpaz V Head of the Civil Administration of Judea and Samaria 37 P.D. 159.
10. See: The explanatory note to the 1982 Bill 532. Proposed Laws 5723 p. 54 (Hebrew).
11. Op. cit. Sec. 2(b).

12. Professionals in environmental studies serve as advisors to the National Board and to other planning institutions.
13. The anti-private sector attitude prevailed also in Britain during the post-war period. See: Cadman, op. cit.
14. See: Planning and Building (Amendment No. 7) Law 5736 - 1976, 30 L.S.I. p. 246. This amending law changed the number of members from 22 to 32.
15. The 7th amending law, op. cit., increased the number of local authorities' representatives in the National Board from 6 to 10.
16. The 7th amending law increased the number of public representatives from 3 to 5.
17. Participation of public representatives in the Board can be seen as a form of "open government". On the link between the two, see: P. McAuslan, The Ideologies of Planning Law, (1980) Chap. 8.
18. Ibid Sec. 49.
19. Ibid Sec. 56.
20. Ibid Sec. 114, 115, 116.
21. There is no time scale in the law for the preparation of National Outline Schemes. However, the State Comptroller criticised the Board for the slow pace of plan preparation. See: State Comptroller 24 Annual Report (1974) p. 547; 26 Annual Report (1976) p. 693.
22. State Comptroller 18 Annual Report (1968) p. 226.
23. Ibid.
24. A. Mazour & D. Radosher, Municipal Reform in the Dan Block: Physical Planning, (Tel Aviv 1973) (Hebrew): Lichfield, op. cit.
25. State Comptroller 30 Annual Report (1980) p. 418; 31 Annual Report (1981) p. 468.
26. Ibid.
27. See: N. Manuhim & H. Ludmer, The Second Tier of Government in Israel: The District Government, (1982) pp. 15-16.
28. Ibid.
29. Ibid Sec. 7.
30. Ibid Sec. 7(10).

31. Ibid Sec. 7(11). In practice, the member is appointed by the Minister on the recommendation of the Planners' Association.
32. See: the 1962 Bill, op. cit.
33. Ibid Sec. 11; On the functioning of additional ad hoc bodies of the District Commission, see: State Comptroller 18 Annual Report op. cit.
34. Ibid Sec. 56.
35. Ibid Sec. 265.
36. State Comptroller 18 Annual Report op. cit. pp. 229-31.
37. State Comptroller 24 Annual Report op. cit; 26 Annual Report op. cit. p. 693; 30 Annual Report op. cit.
38. Ibid.
39. See: 1962 Bill op. cit. Sec. 18, 19; Gouldman op. cit. p. 10.
40. Ibid Sec. 18(B).
41. Ibid Sec. 18(C). However, in practise these members are rarely active in the planning proceedings at the local level.
42. By 1965 there were 27 Municipalities in Israel, Local Councils, Regional Councils. There were some 68 Local Planning Commissions.
43. Roberts, The Reform of Planning Law, (1976); McAuslan, Land Law and Planning, op. cit.
44. C.A. Cross, Principles of Local Government Law, (6th ed.) (1981).
45. Roberts, op. cit.
46. McAuslan, Land Law and Planning op. cit; Ratcliff, op. cit. pp. 113-4.
47. See: Local Authorities (Election and Tenure of Head and Deputy Heads) 5735 - 1975, 29 L.S.I. p. 278; The Report of Municipal Reform in Gush Dan (Ben Shazar Report 1973) (Hebrew).
48. See: M. Virshuvoki & E. Katin, Local Authorities: The Stepchild of Government, 3 Tel Aviv University Studies in Law, 1977, pp. 209-244.
49. Ibid Sec. 18, 29, 29(A); Gouldman, op. cit.
50. Ibid Sec. 30; In Israel local government town planning does not warrant a special department but is part of the functions of the City Engineer.

51. The practise since 1965 whereby almost no use was made of Sec. 30 led the Bar-Sela Commission to impose the use of permit committees upon local planning authorities. See: The Commission for examination of the Planning and Building Law 5725 - 1965, Intermediate Report (1984).
52. Ibid Sec. 19.
53. Ibid Sec. 21 of 1962 Bill, op. cit.
54. Ibid Sec. 13(b).
55. Ibid Sec. 62(a).
56. See: the 1936 Ordinance, Art. 12(1).
57. See: State Comptroller 18 Annual Report, op. cit. p. 434.
58. Ibid Sec. 66, 67.
59. See: State Comptroller 30 Annual Report op. cit. p. 412.
60. For example, the Metrolopitan Area of Tel Aviv does not yet have a statutory outline scheme, though such a scheme has been in preparation since the late 1970's. See: State Comptroller 30 Annual Report, op. cit., p. 412.
61. Ibid Sec. 146, 147.
62. See: HCJ 235/76 Binyanei Kidmat Lod V Lod Local Planning and Building Commission 31 P.D. Part I p. 579.
63. See: State Comptroller 30 Annual Report, op. cit. pp. 414-6.
64. Ibid Sec. 32.
65. Ibid Sec. 33(A). However the Minister may expand the period of five years to another five years. See: Sec. 33(b).
66. Ibid Sec. 34 as amended in 1973. Originally the law provided for merely two local representatives, but since 1973 this number has been 4 out of 13.
67. In the territories administered by Israel, several new towns were established during the second stage; e.g. Yamit and Ofira in the Sinai, Ariel and Emanuel in Sumaria, and Ma'aleh Adumim in Judea.
68. See: the Mandatory 1947 Bill, op. cit.
69. Ibid Sec. 37, 38.
70. 9 L.S.I. p. 54.
71. Supra.

72. See: The First Schedule of the 1965 Law, Sec. 2.
73. Ibid, First Schedule Sec. 6, 7.
74. Ibid, First Schedule Sec. 10.
75. 31 Annual Report (1981) p. 477.
76. Ibid Sec. 2(b).
77. See: M. Hill, Planning in Turbulence: Urban & Regional Planning in Israel 1948-1977, (Haifa 1977).
78. Ibid Sec. 2(b), 7(a), 18(e), 19(a), etc.; of the unfettered discretion of the High Commissioner under the Mandatory 1921 and 1936 Ordinances in appointing members of planning commissions.
79. Ibid Sec. 265.
80. In practice the preparation of planning regulations lagged behind actual needs. This had negative effects upon law enforcement. See: State Comptroller 18 Annual Report, op. cit. pp. 226-7.
81. Cf the provision under the 1959 Bill, but see the change in the 1962 Bill.
82. On the administrative process leading to the establishment of the DOE, see: P. McAuslan, Land Law and Planning, op. cit. p. 77.
83. At a later stage transport was the subject of a separate government department.
84. In issues such as the distribution of industry and offices other governmental departments also have legal powers.
85. Ibid Chap. 3 of the Law.
86. State Comptroller 24 Annual Report, op. cit.; 26 Annual Report; 30 Annual Report, op. cit.
87. Ibid Sec. 49, 57, 63, 69.
88. See for example: the National Outline Scheme (No. 3) for Roads which contains provisions of local planning; e.g. the width of the area along roads in which no building is allowed.
89. See: Town Planning Regulations (Plan Preparation) and Town Planning Regulations (Plans for Repartition and Combination of Plots) which were prepared for the various districts in 1958-9 and 1963 and are still in force.
90. N. Lichfield, op. cit. pp. 46-56.

91. 11 Mishpatim (1981) pp. 197-220.
92. 36 P.D. Part III p. 85.
93. Though in 1966-7 a National Plan for population dispersal was prepared (see: Brutzkus, op. cit.), it was a non-statutory plan, similar to those prepared during the first stage.
94. See: N.O.S. No. 6, approved by the government in 2115 Yalhut Hapissussim (5735 - 1975) p. 1774.
95. J. Jowell & D. Noble, Structure Plans as Instruments of Social and Economic Policy, J.P.L. (1981) pp. 466, 478.
96. Based on Statistical Abstracts of Israel 1966, Table B/4; 1982 Table I/4.
97. E. Efrat, Settlement Geography of Israel, (Tel Aviv 1981) (Hebrew).
98. Statistical Abstracts of Israel 1966, Table B/8; 1982 Table II/11.
99. Op. cit. 1966; 1982 Table XII/11.
100. A. Bein with R. Perlmann, Immigration and Settlement in the State of Israel, (1982) (Hebrew).
101. E. Efrat, Settlement Geography of Israel, op. cit.
102. Ibid Sec. 49, 57.
103. See: National Outline Scheme.
104. See also: Ibid Sec. 3, 65.
105. See: State Comptroller 31 Annual Report (1981) p. 477.
106. This situation took place despite the official policy of the committee to protect agricultural land, even when no agricultural use is being carried out on such land. This policy was given legal backing in HCJ 113/68 Horenstein V The Committee for the Protection of Agricultural Land, 22 PD Vol.II 270; HCJ 445/71 Neve Mador V The Committee for the Protection of Agricultural Land, 27 PD Vol. I 296.
107. Ibid Sec. 49(2).
108. Ibid Sec. 49(6).
109. Ibid Sec. 57(3).
110. Ibid Sec. 61(2).
111. See: Proposed National Outline Scheme No. 17 - Centres for Injurious and Nuisance Industry.

112. Israel Yearbook 5742-3 1982 p. 180.
113. Statistical Abstract of Israel 1900.
114. Israel Yearbook, op. cit. p. 180.
115. Ibid p. 202.
116. Statistical Abstract of Israel, 1966; 1982 Table XIV/10.
117. See: Y. Almogi, Slum Clearance and Reconstruction in Israel, (Jerusalem 1963) (Hebrew); See also: The Explanatory Note of the proposed Rehabilitation Zone (Reconstruction and Evaluation) Law 5725 - 1965; Proposed Laws 5725 pp. 160, 168.
118. 19 L.S.I. p. 301.
119. Ibid Sec. 2,6.
120. Ibid Sec. 3.
121. Ibid Chap. 2 of the Law.
122. Ibid Chaps. 4, 5.
123. Ibid Chap. 2.
124. Cf. M. Grant, op. cit. p. 528.
125. Y. Almogi, op. cit; In the U.S. legislation, the approach of slum clearance was replaced as early as in 1954 by new emphasis on conservation and rehabilitation together with citizen participation. Yet in practice there was only limited involvement of the affected population. See: J. Jowell, Law And Bureaucracy, Administrative Discretion and Limits of Legal Action, (New York 1975) pp. 97-132.
126. M. Hill & D. Fisher, Neighbourhood Devitalization in Israel. A paper submitted to the 24th World Congress of the International Federation of Housing and Planning 1978.
127. N. Carmon & M. Hill, Project Renewal: An Israeli Experiment in Neighbourhood Rehabilitation, (Haifa 1980).
128. See: The International Committee for the Evaluation of Project Renewal, Annual Report for 1983 (1984).
129. On public participation in neighbourhood rehabilitation in Israel, see: Ministry of the Interior, Neighbourhood Rehabilitation - Residents' Participation in the Rehabilitation Process, (Jerusalem 1980) (Hebrew); Tel Aviv-Yafo Municipality, The Effect of "Project Renewal" in Tel Aviv-Yafo on Residents' Change of Attitudes (1983) (Hebrew).

130. E. Alexander, Slum Rehabilitation in Israel: The Administrative Constitutional Context, (Haifa 1980).
131. Grant, op. cit. p. 529; See also: J. Jowell, op. cit. p. 104.
132. 34 L.S.I. 221.
133. Ibid Sec. 3.
134. See: Y. Ginsberg & E. Werezberger, The Renovation of Shared Areas in and around Residential Buildings in Renewal Neighbourhoods. Research Report submitted to the International Committee for Project Renewal Evaluation, (Tel Aviv 1984).
135. Ibid Sec. 56.
136. Ibid Sec. 56.
137. Ibid Sec. 57.
138. Ibid Sec. 55.
139. See: Alterman, op. cit.
140. Ibid Sec. 60.
141. State Comptroller, 30 Annual Report, op. cit. p. 412.
142. See: E. Efrat, Settlement Geography of Israel, (Tel Aviv 1981).
143. Jerusalem District Outline Scheme was the first to be approved in 1977.
144. See: The Metropolitan Area of Jerusalem, No. 6, The Jerusalem Institute for Israel Studies (Jerusalem 1984).
145. See: HCJ 18/82 Hevra Kadisha V Tel Aviv District Planning and Building Commission 38 P.D., Vol. 1, 201; HCJ 701/81 Malhach V The Chairman of Jerusalem District Planning and Building Commission 36 P.D. Part 3, p.1.
146. 27 P.D. Part 2, p. 764.
147. 30 P.D. Part 3, p. 337.
148. Ibid at p. 349; see also: HCJ 668/80 795/79 Gezer Regional Council V The National Planning and Building Board, 36 P.D. Vol. 1, p. 561.
149. 31 P.D. Part I, p. 579.
150. 27 P.D Part II p. 325.
151. Op. cit.

152. McAuslan, The Ideologies, op. cit. p. 219.
153. 27 P.D. Part I, p. 85.
154. 32 P.D. Part III, p. 128.
155. 31 P.D. Part I, p. 103.
156. See also: Justice Berenson's speech in HCJ 445/71 Neve Mador V The Committee for the Protection of Agricultural Land, 27 P.D. Vol. 1, p. 296.
157. HCJ 601/75 Savyon op. cit. at pp. 110-111.
158. Justice Shamgar gives an example for a potential abuse of power if the committee would declare land as agricultural for purposes of freezing development and maintaining reserves of land for the future. This example may lead to the conclusion that the use of these powers for the policy of dispersal of population has been illegal.
159. Op. cit.
160. See: HCJ 162/78 Kupat Holim V The Appeal Committee. 32 P.D. Part III, p. 449.
161. Op. cit.
162. 35 P.D. Part IV 4, p. 736.
163. HCJ 318/75 Hedges V Haifa District Planning and Building Commission, 30 P.D. Part 2, p. 133; HCJ 178/74 Bar-Horin V Nahariya Local Planning and Building Commission, 28 P.D. Vol. 2, p. 757.
164. Ibid Sec. 85, p. 109.
165. 29 P.D. Part 1, p. 492.
166. HCJ 178/74 Bar Horin op. cit.
167. For example, permits obtained on false pretenses can be repealed.
168. HCJ 318/75 Hedges op. cit.
169. Psakim (Mehozim) 5735 Part 1 p. 210.
170. Psakim (Mehozim) 5738 Part 1 p. 210.
171. On planning bargaining in the Israeli planning context from the point of view of a sociologist, see: Y. Azmon, Bargaining in Physical Planning in Israel: A Comparison with the British Experience, 8 Policy and Politics (1980) pp. 443-456.
172. Supra. Part I of this work.

173. 532 Proposed Laws 5723 p. 14 (Hebrew).
174. See: Chapter 3, Art. 7 of the law.
175. C.A. (T.A.) 619/72 The Committee of Cooperative House etc. V Belz-Zackes; Psakim (Mehoziem) 5734 Part 3, p. 452.

PART III

Chapter 9

1. Social control is often associated with formal governmental-legal institutions, though it may also acquire non-official forms. See: J.P. Gibbs, Social Control: Views from the Social Sciences, (1982); D. Black (ed.) Toward a General Theory of Social Control, (1984).
2. W. Ashworth, The Genesis of Modern British Town Planning, (London 1954).
3. A. Hyamson, Palestine Under the Mandate 1920-1948, (London 1950); N. Bentwich, Fulfillment in the Promised Land 1917-1937 (London 1938).
4. S. Reichman, From Foothold to Settled Territory 1918-1948, (Jerusalem 1978).
5. J. Roucek, The Concept of Social Control, in J. Roucek, Social Control for the 1980's (Connecticut 1978).
6. M. Weber, The Theory of Social and Economic Organization, (trans. A. Henderson and T. Parsons) (1974).
7. P. Self, Administrative Theories and Politics, (2nd ed.) (London 1977).
8. Op. cit. p. 22.
9. R. Goodman, After the Planners, (1972).
10. Cf. the role of law in this socio-political respect, see: W.M. Evans, The Sociology of Law, (1980) Parts VI, VII.
11. M. Gurion, Introduction to the History of Local Government in Israel, (Jerusalem 1957).
12. On the educational role of the law on the respect and obedience of the people, see J.C. Smith & B. Hogan, Criminal Law, (4th ed.) (London 1978) p. 4.

13. For the general principles, see: H. Stein, Public Administration and Policy Development, (New York 1952).
14. Cf. L. Nader & D. Serber, Power as Process in Regulation, in W.M. Evans, op. cit. pp. 331-342.
15. J. Bailey, Social Theory for Planning, (London 1975).
16. For the theory of institutionalisation of power, see: T. Parsons, Politics and Social Structure, (New York 1969).
17. For the theory of legitimacy in the political respect, see: M. Weber, op. cit.
18. S. McConnell, Theories for Planning, (London 1981).
19. Cf. Stuart Nagel's research for the correlation between party affiliation and decision making by regulatory commissioners in the U.S., in S. Nagel, Regulatory Commissioners and Party Politics, in W.M. Evans, op. cit. pp. 276-284.
20. The British formed in Palestine the responsible but not representative government. On the distinction between the two, see: A.H. Birch, Representative and Responsible Government, (London 1964).
21. E.W. Evans, Principles and Methods of Administration in the British Colonial Empire, (1950).
22. Cunningham's preface to H. Kendall, Jerusalem: The City Plan, (London 1948).
23. D. Heap, The Land and the Development, (Hamlyn Lectures 1976).
24. See: P. McAuslan, The Ideologies of Planning Law, (London 1980).
25. P. McAuslan, Land Law and Planning, (London 1975) p. 97; See also: Prof. Jowell's comment on participation in urban renewal in the U.S. which is very relevant to the Israeli case. He says: "The history of citizen participation in urban renewal seems to be filled with cases of agencies paying symbolic or token service to the democratic ideal and using the requirement to promote the legitimacy of their own proposals or to offset spontaneous but disruptive participation of local protest groups". (J. Jowell, Law and Bureaucracy, Administrative Discretion and the Limits of Legal Action, (New York 1975)) p. 102.
26. On the move from political considerations to professional bureaucracy, see: P. Self, op. cit. Chap. 1.

Chapter 10

1. On the meaning of administrative efficiency in the context of the political system, see: P. Self, Administrative Theories and Politics, (2nd ed.) (London 1977) p. 201.
2. Ibid.
3. P. Geddes, Cities in Evolution, (Introduction by P. Johnson-Marshall) (London 1968).
4. E. Samuel, British Traditions in 14 Administrations of Israel, (1957).
5. R. Storrs, Memories, (New York, 1937).
6. P. McAuslan, @The Ideologies of Planning Law (1980) p. 215.
7. I.M. Robinson (ed.) Decision Making in Urban Planning, (1972).
8. P. McAuslan, The Ideologies, op. cit.
9. P. McAuslan, Land Law and Planning, op. cit. Chap. 2.
10. On advantages and disadvantages of rules and discretion in the administrative process, see: J. Jowell, Law and Bureaucracy, op. cit.
11. Storrs, op. cit.
12. On social control from below, see: M.P. Baumgartner, Social Control from Below, in D. Black, Toward a General Theory of Social Control, op. cit. Vol. I. pp. 303-345.
13. K. Mannheim, op. cit.
14. For example, the Report of the Commission on Examination of Crime in Israel (Shimron Committee) saw in the behaviour of the planning authorities an incentive to breach of town planning laws.
15. P. Hall, Urban and Regional Planning, (2nd ed.) (1982).
16. University College London, Bartlett School of Architecture and Planning, The Normative Planning Process: Background Paper, p. 6 (mimograph).
17. J.B. McLaughlin, Urban and Regional Planning: A Systems Approach, (London 1969).
18. M. Grant, Urban Planning Law, (London 1982).
19. See: D.L. Rogers & D.A. Whetten, Interorganizational Coordination, (Iowa 1982).

20. See: R. Bilski & I. Galnoor, Ideologies and Values in National Planning, in (R. Bilski et al ed.) Can Planning Replace Politics? The Israeli Experience, (1980) pp. 77-98.
21. J. Ratcliff, An Introduction to Town and Country Planning, (London 1981).
22. On economic efficiency and social stability, see: O. Zinam, Economic Control, in J. Roucek (ed.) Social Control, op. cit. pp. 173-182.
23. See: H. Samuel in his Interim Report on the Civil Administration of Palestine during the period 1st July 1920 to 30th June 1921 (H.M.S.O. 1921) (Cmd 1499).
24. W. Ashworth, The Genesis of Modern British Town Planning, (London 1954); J.B. Cullingworth, Peacetime History of Environmental Planning, (H.M.S.O. 1978-80) Vols. I-IV.
25. M.J. Burton, Introduction: General Planning and Physical Planning, in M.J. Burton (ed.) The Spirit and Purpose of Planning, (London 1974) pp. 7-22.
26. A. Sutcliffe, Towards the Planned City, (Oxford 1981); T.H. Logan, The Americanization of German Zoning, Journal of the American Institute of Planners (1976) pp. 377-385.
27. L. Keeble, Principles and Practice of Town and Country Planning, (1964).
28. For the meaning of the term "design orientation", see: W. Ashworth, The Genesis of Modern British Town Planning, (1951).
29. For the meaning of the term "Rule Model", see: M.J. Burton, Introduction: General Planning and Physical Planning, in M.J. Burton (ed.) The Spirit and Purpose of Planning, op. cit. pp. 7-22; J.J. Jowell, op. cit.
30. E.M. Bassett, The Master Plan, (New York 1938).
31. T. Sharp, Town Planning, (1940).
32. M. Loughlin, Planning Control and the Property Market, 3 Urban Law and Policy (1980), pp. 1-22.
33. See: Part I of this work.
34. It was told that a Jewish judge in the Mandatory Court who found a Jewish property owner guilty of unauthorised building fined the same only a small sum of money, while adding "bless you for your contribution to the building of the country".
35. H. Rittel & M. Webber, Dilemmas in a General Theory of Planning, 4 Policy Sciences (1973) pp. 155-169.
36. See above, Chap. 8.

37. G.E. Cherry, The Development of Planning Thought, in Burton (ed.), The Spirit and Purpose of Planning, op. cit. pp. 60-84; Ratcliffe, op. cit. p. 14.
38. M. Roberts, An Introduction to Town Planning Techniques, (London 1974) p. 15; J.B. McLoughlin, The P.A.G. Report: Background and Prospect, 52 Journal of the Town Planning Institute (1965) p. 257.
39. See: Part II of this work.

Chapter 11

1. On social stability and social control, see: J.S. Roucek (ed.) Social Control for the 1980's, (1978).
2. D. Black (ed.) Toward A General Theory of Social Control, Vol. I, Fundamentals, (1984); B. Abel, M. Sander, R. Brooke, Legal Problems and the Citizen, (London 1973); M. Zander, The Legal Profession and the Poor, 20 Northern Ireland Legal Quarterly 109.
3. An amendment to the planning regulations which was introduced recently in Israel is certain to cause even greater inequality between the various sections of the community. According to the new regulations, planning authorities, in determining applications for building permission, may grant the permission while referring those who object on conflicting property rights to the courts, where previously planning permission would have been refused.
4. The terms are taken from J. Jowell, The Limits of Law op. cit.
5. On restrictive covenants, see: McAuslan, Land Law and Planning, op. cit. chap. 4.
6. On the different legal position in Britain, see: J. Alder, Development Control, (London 1979).
7. D.L. Foley, British Town Planning: One Ideology of Three? (1960) British Journal of Sociology Vol. II, p. 211.
8. McAuslan, Land Law and Planning, op. cit. chap. 1.
9. J. Jowell, The Limits, op. cit.
10. CA 416/58 Jodiun V Salimann 13 P.D. p. 919, 923.
11. HCJ 353, 305/85 Moor V The Central District Planning and Building Commission, 38 P.D. Part I p. 148, per Justice Orz at p. 149.
12. G.E. Cherry, The Politics of Town Planning, (London 1982).

13. Rittel & Webber, op. cit. p. 161.
14. P. Self, op. cit.
15. Foley, op. cit.
16. See: F. Elkins, The Child and Society, (New York 1960).
17. O.G. Brim & S. Wheeler, Socialisation after Childhood, (New York 1966).
18. On social control and socialisation, see; T. Parsons, The Social System, (1951).
19. S.E. Eisenstadt, Israeli Society, (Jerusalem 1967).
20. S. Deshen, Social Organisation and Politics in Israeli Urban Quarters, 22 The Jerusalem Quarterly (Winter 1982).
21. P. McAuslan, The Ideologies, op. cit; Charry, The Politics of Town Planning, op. cit.
22. Foley, op. cit.
23. A.D. King, Exporting Planning: The Colonial and Neo-Colonial Experience, in G.E. Cherry (ed.), Shaping an Urban World: Planning in the Twentieth Century, (London 1980) pp. 203-220.
24. Ibid, pp. 207-8.
25. Ibid, p. 208.
26. King's analysis (at p. 206) of the colonial situation whereby the colonial society was dependent on the industrialised metropolitan society ("dependent urbanisation") leans on M. Castells, La Question Urbaine, (Paris 1972).
27. J. Friedman & R. Wulff, The Urban Transition: Corporation Studies of Newly Industrialising Societies, (London 1976).

Chapter 12

1. L. Keeble, op. cit.
2. E.R. Alexander, If Planning Isn't Everything Maybe It's Nothing, 52 Town Planning Review (1981).

3. A.B. Wildavsky, If Planning is Everything Maybe It's Nothing,
4 Policy Sciences (1973) pp. 127-153; See also: R. Alterman,
Selected Aspects in the Implementation of Urban Plans:
Measures of Effectuation and Identification, (D.Sc.
Dissertation) (Haifa 1975).
4. Public involvement in planning has always been central in regard
to planning in Jerusalem. Examples from the second stage are HCJ
394/72 France Hill Hotel V Jerusalem Local Planning and Building
Commission, 27 P.D. Vol. II, 325.